



Project

Victims in Europe

VinE conference
papers



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VinE seminar papers

On 25 and 26 June 2009, the Seminar Victims in Europe was held at Calouste Gulbenkian Foundation, in Lisbon. The purpose of this event was to gather experts and professionals in the area of justice, social matters (civil society organisations) and policy-makers of the 27 Member States and also other countries. This publication gathers the valuable contributions of several specialists that gave us the honour to be present in this event.

Many thanks to them and to our partners in the Project Victims in Europe.

Opening Session

Alberto Costa **Minister of Justice**

The hosting of this seminar in Portugal is of particular significance to us.

The European Union's Framework Decision of 15th March 2001, on the standing of victims in criminal proceedings, was the outcome of a Portuguese initiative, during the Portuguese Presidency of the European Union, in the first semester of 2000.

The victim also took on a very important role in our last Presidency. We decided to dedicate the Lisbon Informal Council to child abduction alert, with the relevant practical developments that are known, namely during the French Presidency.

I am aware that it is not just one subject, one understanding or one responsibility that unites us, but above all the concern to act for the benefit of victims.

I would like to mention that it has been one of the major issues of this parliamentary term.

Innovations concerning the accused have often been highlighted.

But there have been dozens of innovations, that have been much less highlighted, which have been for the benefit of the victims.

A few examples:

In terms of Criminal Law,

- The crime of domestic violence has been made autonomous, which foresees, among additional punishments, distancing the offender with the possibility of control by electronic surveillance;
- The incrimination of human trafficking was reinforced, to cover not just sexual exploitation, but also labour exploitation or organ extraction;
- The withholding of documentation of victims of trafficking and the use of victims of trafficking were criminalized;
- The crimes of child pornography, resorting to child prostitution and the purchase and sale of children for adoption were created;
- The punishment for fraud was aggravated on account of the particular vulnerability of the victim, due to age, disability or illness.

At a criminal procedure level,

- In offences against children, the extinction limit for the right to register a complaint has been extended until the victim reaches adulthood; and in sexual offences against children, the prescriptive term has been extended;
- In crimes against the freedom of or sexual offences against children and in human trafficking, the duty has been introduced to take statements for the record during the inquiry;
- Restrictions to proceedings in open court have been increased to cover all sexual offences and the crime of human trafficking;

- The victim is now informed of the release date of the accused or convict, whereupon it poses a danger to him/her;
- Mediation was introduced into the criminal process;
- The range of crimes covered by the witness protection regime has been extended.

In Portugal, since 2007, every 2 years, Parliament defines the aims and priorities in criminal policy. These guidelines are binding for the Public Prosecutor's Office, the police and the sentencing and probation services. In our Criminal Policy Laws – the first still in force and the second which already has approval for its enforcement between 2009-2011-, particular emphasis was given to the reinforced protection of especially vulnerable or defenceless victims. In fact, in that law:

- Among the specific objectives for the biennial, the protection of especially vulnerable victims was elected – I refer to children, the elderly, people with disabilities, immigrants and in certain circumstances, women.
- Crimes committed against these victims shall be of priority prevention and priority investigation;
- The police shall develop special crime prevention programmes for the elderly, children and other victim categories that are particularly vulnerable;
- Prison services shall make available specific convict rehabilitation programmes, namely in terms of prevention and control of violent behaviour or against freedom or sexual offences;
- And guidelines are defined with a view to encouraging the application of criminal mediation over the next two years.

It is an activity which we are continuing and extending.

Just a few days ago another legislative proposal was approved in which we aimed for the protection of children, allowing for criminal records to be taken into account, namely for crimes of domestic violence, ill-treatment or sexual offences against children, as a means of controlling access to jobs which involve regular contact with children; and also being applicable to decisions in the adoption and care of children.

In having access to such jobs, the employer is obliged to demand a criminal record certificate from the candidate, with a view to confirming their suitability; and, in the decisions in caring for children, the Court shall consult the criminal record of the persons to whom the child may be entrusted.

Parliament has also granted its general approval for – and it is now analyzing in detail – the proposal which we submitted for prison law reform. It is a new Code containing innovative news for the benefit of victims.

For example,

- The initial assessment of the prisoner also takes into account the risk he poses to the victim.
- In decisions in granting leave or in an open regime, the victim's protection needs shall be taken into account;
- Restorative programmes are foreseen, including mediation, whenever, obviously, both parties consent to such.
- The salary received by the prisoner is partially affected by the compliance of obligations, namely regarding compensation to the victim;

We also submitted to Parliament a legislative proposal which aims to change the regime of granting compensation to victims of violent crime and domestic violence. Under the terms of the proposal:

- Compensation is extended to crimes of negligence and moral damages
- The compensation to be granted by the State may consist, in part, of social and educational support measures or therapeutic measures appropriate for the victim's physical, psychological and professional recovery.
- Victims of domestic violence may be given an advance payment of the financial compensation, guaranteeing them the means of support for six months for their family commitments and maintenance.
- The principle of non-discrimination in terms of nationality is safeguarded, extending the right to the advance payment of compensation to citizens of EU Member States who reside in Portugal and who are not entitled to compensation in the State where the damage occurred.
- Procedures are simplified, allowing for a more efficient system and faster decision making, foreseeing the electronic submission and processing of requests.
- A procedure in which civil society participates is foreseen, which shall have the role of informing and cooperating with the Government in the verification of the legal requirements for granting compensation.
- Finally, the State, whenever it provides advance payment of compensation to the victim, has the right of recourse over the aggressor. To encourage payment by aggressors, prison services shall develop occupational programmes with a view to motivating the aggressor, through his productive work while he serves his sentence, to obtain financial resources, which shall be binding to the payment of compensation duties to the victim or the State, in the event that the latter has provided advance payment.

I am delighted to announce here that next Monday the Protocol shall be signed implementing the Child Abduction Alert System in Portugal. This system shall allow the gathering from the population, in the hours following the abduction of a child, all the pertinent information to assist in the rapid location and release of a child by the criminal investigation authorities. The initiative by the Ministry of Justice shall associate several dozens of public and private bodies to the judicial and police authorities to disseminate the abduction alert message. The creation of the national child abduction alert system arises following the proposal submitted during the Portuguese Presidency of the European Union in the Informal Justice and Internal Affairs Council in Lisbon, whereupon Portugal proposed the creation of a Europe-wide "Abduction Alert" mechanism.

It is an instrument of State-society cooperation which is available among us for the victim, his freedom, his physical integrity and his life.

This simple list of innovations introduced within the public domain or at voting phase aims to be a testimony of the support for the initiatives and organizations, which, in society, wish to contribute to the cause of support for the victim - and aims to encourage them to continue.

We believe that many of the proposals which we have presented – the review of the Criminal Code, the Code of Criminal Procedure, Criminal Mediation, the laws of Criminal Policy, Witness Protection, Controlling Access to Activities with Regular contact with Children, the Code for the Execution of Sentences, Support to Victims of Violent Crime and Domestic Violence – are the ways and means for everyone – Society, State, European Union – to take the fight for victims' rights further.

A fight that needs more from everyone to become more effective.

I trust that this seminar shall provide a significant contribution in that direction.

Wishing you good work and good conclusions.

Falling victim to crime is often experienced as difficult and it can be traumatic and intimidating. This is especially true when people fall victim to crime in other countries than that of their residence. For the victim, numerous problems and questions may arise concerning, among other things, how and where to get help and support, how the justice system works and what will happen during the judicial procedure, etc. It is therefore essential for victims of crime to get information on relevant issues like these in a language that they understand.

Unfortunately, the rights of victims of crime is an issue that has largely been left out of the work in the Justice and Home Affairs area during the last couple of years. It will be a priority for me to raise this issue on the agenda of the EU with the aim of accomplishing concrete improvements. The rights of victims of crime is an issue of direct importance for citizens of the EU, where we can bring added value to our citizens by working together at EU level.

The Swedish Presidency will begin in a few days and I am really looking forward to it. During our Presidency, the most important challenge will be to get the multiannual Stockholm Programme in place, a programme that will guide the work of the Justice and Home Affairs area for the coming five years. We aim to put together a realistic yet ambitious programme, which should be forward-looking and concrete with clear priorities. It is also important that a good balance is struck in the programme between fighting crime effectively and protecting the privacy of the individual. As a basis for future work in the area of victims of crime, we also aim to have a section on rights of victims of crime included in the programme.

Trafficking in human beings is another top priority. We will therefore do our best to conclude the negotiation of the Framework Decision on preventing and combating trafficking in human beings and protecting victims. We will also try to make as much progress as possible in the negotiation of the Framework Decision on combating sexual abuse, sexual exploitation of children and child pornography.

We had hoped to have the chance to lead the negotiation of a revised Framework Decision on the standing of victims in criminal proceedings. To our disappointment, the Commission has announced that no proposal will be presented this year, or that it will in any case be postponed. Now that this will not happen, we plan instead to take an initiative to draft and negotiate council conclusions on a strategy concerning fulfilment of the rights of and improved support to persons who fall victim to crime in the EU. I believe that there is a need to reach a political agreement on principles and priorities that will guide future work in this area, which we hope to accomplish through this initiative.

Finally, on 22–23 July we will host a conference in Stockholm entitled Justice in the EU – from the Citizen's Perspective. The theme of the conference will be citizens' access to civil justice and their rights in criminal proceedings. This main topic will be approached from different angles, such as communication of different kinds between courts and citizens and the rights of suspects, defendants and victims of crime in criminal proceedings. I hope to see as many as possible of you at the conference in Stockholm. There are still some places left if you are interested.

I am pleased to know that so many prominent people are gathered in Lisbon to discuss this important subject. I wish you every success in your deliberations and it is my sincere hope that this conference will lead to concrete and important results in our common efforts to strengthen the rights of and support to victims of crime throughout the EU. During our Presidency, we will do our best to contribute to that aim. What will count at the end of the Swedish Presidency is the degree of success in accomplishing concrete improvements affecting the everyday life of our citizens.

Project Victims in Europe: Preliminary results of the assessment of the implementation of the Framework Decision on the standing of victims in criminal proceedings in the 27 Member States

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Introduction

Before I begin my presentation I would like to extend a few words of thanks. First to the organizers APAV and Victim Support Europe for the opportunity to allow me to speak at this conference. It is shaping up to be a fantastic two days, and am also very grateful for the chance to return to Portugal, which is one of my favourite countries in Europe. The only negative aspect I in fact can think of is that you keep beating us at football! Moreover I would like to thank my colleagues in Tilburg Suzan van der Aa, Rene van Merrienboer and Marc Groenhuijsen for their contribution to this presentation.

Moreover I am going to be discussing the EU Framework Decision on victims with you in the context of project Victims in Europe, in which we cooperated with the great people of APAV, and can not express sufficiently how impressed I have been with the work of Carmen Rasquette, Carla Amaral, Marta Pita, Frederoco Moyano Marquez and all their colleagues at the head office here in Lisbon.

On the 15th of March 2001 the European Union Framework Decision on the standing of victims in criminal proceedings was adopted. I think it's safe to say that this event is a milestone in more than one way. It is the first time that there is a so-called 'hard-law instrument' concerning victims of crime available at the international level. The Framework Decision codifies rules at the supranational level concerning the legal position of victims that are binding concerning the domestic legal order of the member states. Prior to 2001 only soft-law instruments were on offer, like the resolution of the General Assembly of the United Nations and the Recommendation of the Council of Europe in this field.¹ The Framework Decision not only approaches matters forcefully, but also speedily. For the largest part the provisions had to be implemented within one year. There are only a few exceptions to this rule, with articles 5 and 6 requiring implementation by 2004 and article 10 by 2006. This strict regime –the combination of binding norms and the short period for adaptation of national law –leads to a number of questions, which I would like to discuss with you:

The background and context of the Framework Decision

The European Commission's negative evaluation of the progress in the development of the Framework Decision

The concept of implementation in Framework Decision's and the reason's why that is complicated in the situation of the Framework Decision for victims. These complexities formed the motivation for project VINE. Carmen will tell you much more about this project in her presentation and in workshop A, directly following Suzan and Carmen will discuss the preliminary results of this project in a highly interactive fashion.

¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34 of 29th of November 1985; Recommendation (1985)11 on the Position of the Victim in the Framework of Criminal Law and Procedure, 28th of June 1985; and of later date than the Framework Decision Recommendation (2006)8 on Assistance to Crime Victims, 14th of June 2006.

Some preliminary observations and conclusions on the basis of the results of project VINE.

The background and context of the Framework Decision

In recent years Europe has been flooded by a wave of Framework Decisions in the field of criminal justice. This is a marked difference with the situation well into the nineties. Then the EU held the opinion that it did not have the competence to interfere with the criminal justice affairs of the member states. This perspective also applied with respect to the position of victims of crime. When non-governmental organisations for victim assistance applied for possible financial support from Brussels, the answer was invariably negative. The reason given was that they were active in the field of criminal justice and that this was not 'Europe's business'. With this background in mind it is remarkable that the Framework Decision on victims eventually belonged to the first generation of Framework Decisions in the area of criminal justice.

How to explain this sudden advance of victims? The heart of the matter is the position of the so-called cross-border victims. A cross-border victim does not always speak the language, does not understand the host country's legal system and has often returned to his country of origin long before the trial. These specific problems of 'foreign' victims were linked with the classic European freedoms and in particular with the freedom of persons to travel without restrictions (without discrimination based upon nationality) within the European common space. This consideration has been the main driver for European competence in the protection of victims of crime.

But it is not practically feasible to regulate the position of cross-border victims, without paying attention to national victims as well. European standardization of the position of cross-border victims may lead to the situation that cross-border victims enjoy rights not open to nationals, which would again be at odds with the freedoms relating to the European common space. This is the reason that the content of the Framework Decision, although it is still inspired by the phenomenon of cross-border-victimization, ultimately applies to all victims of crime.

How does this background of the Framework Decision impact its provisions? I believe the content of the Framework Decision can be characterized in two ways. First: as to the main theme, the document is extremely similar to the other previously existing international instruments. Second: concerning the details, all the supranational texts differ. Where the differences in details may be mere coincidences in other surroundings, in the case of the Framework Decision they appear to be caused by deliberate choices that follow the national law of the member states. We will elaborate this observation below.

The main theme of the Framework Decision follows the international consensus also evidently expressed by other legal instruments. At its core it includes the following basic rights for victims of crime:

A right to respect and recognition at all stages of the criminal proceedings (article 2);

A right to receive information and information about the progress of the case (article 4);

A right to provide information to officials responsible for decisions relating to the offender (article 3);

A right to have legal advice available, regardless of the victims' means (article 6);

A right to protection, for victims' privacy and their physical safety (article 8);

A right to compensation, from the offender and the State (article 9);

A right to receive victim support (article 13);

The duty for governments to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure (article 10);

The duty for the State to foster, develop and improve cooperation with foreign States in cases of cross border victimisation in order to facilitate more effective protection of victims' interests in criminal proceedings (article 12).

The shortest and most accurate summary of the general of the Framework Decision is probably the 8th article of its preamble. 'The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed.'

As to the details of the different provisions the first point of interest is the phrasing of articles 5 through 7 of the Framework Decision. In these articles, which relate to safeguards for communication (translators), to legal assistance and to reimbursement of expenses incurred due to participation in the criminal procedure, the scope is restricted to 'the victim having the status of witnesses or parties'. This is a meaningful restriction. The United Kingdom insisted on this particular phrasing. The background is that common law systems do not recognize the so-called 'partie civile'. There is no possibility for the injured party to adhere a claim for compensation to the criminal justice procedure, which is a common legal figure on the continent. The way the Framework Decision is phrased means that every victim who is not heard as a witness in the court case is deprived of the three procedural rights mentioned. It seems evident that the government of the United Kingdom has insisted on this restriction, expecting that this would diminish the need for substantial changes in her national legislation.

This cautious approach is also evident in other aspects of the Framework Decision. Concerning 'mediation' for example, the Framework confines itself to the rather vague instruction that member states 'shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.' That offers a lot of leeway. As to the delivery of victim support through non-governmental organisations the Framework Decision decrees that this should be promoted or encouraged (art. 13). However the details of the Framework Decision can not be fully explained by the calculated reservations of the member states. There are also many provisions that will evidently necessitate extensive change in national legislations. A prime example is the ambitious basic requirement in article 2 that not only demands respect and recognition for all victims, but above all requests specific treatment for victims who are particularly vulnerable. This will involve changes in legislation almost everywhere in Europe . The implications of the provisions relating to the right to receive information are also far-reaching (art. 4). None of the previous international victims' rights instruments contain such comprehensive requirements on this issue. In advance the question should have been raised whether the member states were prepared for the enormous logistic consequences implied by these provisions. The level of translation facilities for victims must be of the same level as those for suspects (art. 5). Probably no member state met this requirement when the Framework Decision was adopted.

The European Commission's evaluation

What were the consequences of the Framework Decision after its adoption? We emphasize that the time allowed for implementation was extremely tight. For most provisions transposal into national law was required by March 2002, exactly one year after adoption of the Framework Decision. Bearing in mind the sometimes far-reaching requirements of the Framework Decision, these tight deadlines may not have been very realistic.

In March 2004 the European commission report on the compliance with the Framework Decision was published. The report was extremely negative in its assessment. It commences with the observation that member states have a considerable amount of discretion in the transposal of Framework Decision requirements. It is not necessary, for example, that national legislation adopts the same terminology as the Framework Decision. However, after this rather mild opening, the Commission points out serious

shortcomings on a large scale. The overall conclusion is that: "No member state can claim to have transposed all the obligations arising from the Framework Decision, and no Member State has correctly transposed the First paragraph of Article 2". The latter is a particularly fundamental charge, because the paragraph mentioned is more or less the root of all other concrete victims' rights: 'Each Member State shall (...) make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.' The Commission's overall judgement is then subsequently documented by a long list of more specific shortcomings. We will restrict ourselves to a number of rather typical examples. According to the Commission only one country, Finland, has adequately transposed the requirement to inform the victim of the release of the suspect or the convicted offender. Nearly no member state has done enough to meet the requirement that victims should also have the right not to receive information (the so-called opt-out procedure). The requirement that victims should be reimbursed for expenses made during the procedure is inadequately implemented almost everywhere. I could add many other examples, but the point should be clear. According to the Commission the member states had not adequately complied with their obligations. Subsequently many governments sent in a reply to the critical report of the Commission. In their rebuttal most countries claim that the Commission has misjudged the situation. The member states are of the opinion that the existing legislation in fact bears closer resemblance to the Framework Decision than the Commission report suggested. Nevertheless most countries admitted that substantial changes are still required.

The concept 'implementation' of Framework Decisions

The previous section has shown various differences of opinion between the member states on the one hand and the European Commission on the other, concerning the requirements that follow from the Framework Decision on the position of victims in the criminal procedure. At first glance this gap in perception is quite remarkable. After all, the legal status of Framework Decisions is clear. Member states are obliged to reach the result laid down in the Framework Decision. However, the way they reach this result is left to their own discretion. They can choose the means they consider appropriate to reach the prescribed goals. So far, so good. However in practice the concept of implementation has proved to be considerably more complicated.

First of all, there is no clear, formalised fact-finding procedure in place, at the European level. The member states submit a report, but the Commission does not have the option to verify its veracity. In addition the Commission does not have the possibility to request follow-up information concerning the reports. As a consequence the Commission has a strong tendency to rely completely on the literal text of the formal legislative provisions the member states supply. This means that the Commission's evaluation more or less entirely focuses on transposal of Framework articles into national legislations. This implies that the Commission can not review the actual practice existing in the various countries. It may well occur that a certain country follows Framework requirements in practice, but gets ostracized because this practice has no formal legislative base. A good example is art. 8 paragraph 3 of the Framework Decision, which relates to separate waiting rooms for victims and offenders. The conclusion is then that in the described approach the Commission takes 'implementation' to be synonymous with 'transposal' while from the victims' perspective the emphasis should be on 'compliance'.

A similar observation is applicable to the content of fixed administrative guidelines. In my own country (the Netherlands) victims' legal position is laid down, amongst others, in the so-called instructions of the prosecution service. The regulations contained in these instructions are publicized, have external effects and are acknowledged by our Supreme Court as being part of 'the law of the land'. They are law in a material sense. If these 'instructions' comply with the Framework Decision requirements, then we do not see any reason to question the sufficiency of implementation.

We observe another problem relating to implementation and compliance. The content of many of the norms are phrased in such an 'open' fashion that it is hard to ascertain whether a member state fulfils the obligation or not. This is easily illustrated with two an example. Art 8 paragraph 1 of the Framework Decision ensures 'a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of their privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy.' But what level of protection of the victims' physical safety meets the standard of being suitable?

The final problem concerning implementation is due to the peculiar character of this Framework Decision. If one reviews the current list of Framework Decisions in the field of criminal justice it is quite obvious that most of their topics are relatively small, confined subjects. For example the Framework Decisions regarding protection against euro counterfeiting (2000/383/JBZ), on money laundering (2001/500/JBZ), on combating trafficking in human beings (2002/629/JBZ) and even in the case of the European Arrest Warrant (2002/584/JBZ).

The Framework Decision on victims is of a completely different nature. It contains provisions that affect large portions of the Code of Criminal Procedure. Implementation therefore does not only require the introduction of a number of legislative provisions, but also careful reflection on the entire criminal procedure.

Together this forms the basis of project VINE, in which not only implementation in a formal legal sense is reviewed, but also law in material sense, organization implementation and the actual impact on victims of crime. Carmen will tell as a lot more about the undertaken of this project.

Some preliminary observations on the basis of project VINE

Project VINE is still ongoing, and in the workshop following this plenary session the results will be discussed with you in far more detail than I can do now. I will offer you some of my main observations on the basis of the results until now:

1. The position of cross-border victims.

Improving the position of cross-border victims lies at the heart of the Framework Decision. However, although there is some improvement visible in their lot, there position does not have seem to have changed much since the implementation. Article 11 deals with the organisation of the process and the possibility that the victim was not able, or in the case of severe crimes, unwilling to report the crime in the country where it was committed. The Framework Decision specifically mentions three alternatives. In the first place it allows the victim to make a statement immediately after the commission of an offence. This offers victims the possibility to report the offence before returning home. This avenue is open to victims in 11 of the 13 countries. However it is mostly a specific instance of a more general provision which also applies to residents of the countries themselves.

The Framework Decision also states, article 11 section 2: 'Each Member State shall ensure that the victim of an offence in a Member State other than the one where he resides may make a complaint before the competent authorities of his State of residence if he was unable to do so in the Member State where the offence was committed or, in the event of a serious offence, if he did not wish to do so.' This method, whereby a victim reports the offence once he returns home, is not available in many countries, with respondents stating that the member state itself should have jurisdiction before allowing the filing of a report.

2. Use of vague language and harmonisation

We have already emphasized that the Framework Decision, in part due its use of vague language, offers the member states a lot of room for interpretation. This can hamper the harmonisation of the victims' position. After all: when member states interpret key concepts differently, this will have a subsequent impact on the practice in countries. An example is the concept 'particularly vulnerable victim' in article 2 paragraph 2. According to the article this type of victim is entitled 'to specific treatment best suited to his or her circumstances'. This may well impact the whole process of victim assistance for these victims. It is therefore remarkable that the Framework Decision does not breathe a word about the criteria by which a victim may be considered particularly vulnerable. It is completely up to the member states' discretion to define this concept. However, the degree of unanimity is large. Children and mentally disabled victims are considered vulnerable in (nearly) all member states, and victims of domestic and sexual violence in most. This phenomenon is visible with other key concepts as well and I would suggest that the cooperation of those working in the field of victims of crime at the European and international level play a large role in this harmonization.

3. Harmonization and established criminal justice procedures including the position of the offender

Harmonization and also improvement of the victims position is far more problematic due to engrained differences in the criminal justice process and the treatment of offenders across the European Union. I have already mentioned the difference between adversarial and inquisitorial systems. But my impression of the results of VINE until now that it has also proved far more difficult to change the position of victim's in the situation where that might appear to clash with the position of offenders. A good example may be found in the results concerning information, where marked progress has been made concerning the information given to victims at the initial stages, but much more resistance is found in disseminating information concerning the release of the offender from prison. Granting additional procedural rights to victims is always controversial, due to the possible tension of procedural rights for victims and the position of the offender. The criminal justice establishment is still weary of victims and therefore resistant to change.

4. Improvement

The results show improvement in many aspects of the victims position in the period since the adoption of the Framework Decision. But that improvement does not equally apply to all aspects of the Framework Decision. I have already noted the difficulties encountered when engrained criminal justice principles or suspects and offenders rights may be put under pressure. And of course money matters. Many of the representatives of Victim Support organisations here today will agree with the fact that costly innovations will not be supported or implemented in a fashion that meets victim' needs. The funding of many Victim Support Organisations is no doubt a case in point.

Moreover we can question whether developments can be rightly termed improvements. The rise of penal mediation and other forms of restorative justice for example is not necessarily in the interests of victims for example. This depends to a large extent on the exact form that these initiatives take. This relates to the wider phenomenon that the form and shape of the implementation of victims' rights and services determines their usefulness.

5. The importance of Victim Support Europe

My colleague Marc Groenhuijsen and I already concluded that the effects of the Framework Decision have not been qualitatively different from earlier soft-law instruments. There has been improvement, but not so much on difficult or costly issues. There is harmonization, but this seems to mainly due to cooperation between those working in the field, rather than the literal text of the Framework Decision. Governments and the criminal justice establishment still need continual convincing of the importance of victims' rights in a manner that is more constructive than tough sentencing proposals.

In all these matters I foresee Victim Support Europe to have a vanguard position within the European Union. It has been and will be in a large part due to the efforts of this organisation that the Framework Decision will improve and harmonize the victim's position across Europe. And I am convinced that this conference in itself will prove valuable to this goal as well.

"Thanks for your attention, and now over to you Carmen."

In our daily work, APAV as a victim support organization felt the need to investigate the actual existing rights and to push forward basic principles that would allow victims to feel supported and to be able to act.

We also understood that this is an issue that only goes further if these actual rights can be applicable in all the 27 Member States.

Following this, we presented this project to Victim Support Europe which immediately embraced it.

Therefore, Project Victims in Europe, co-financed by the European Commission under the Criminal Justice Programme, is promoted by APAV on behalf of Victim Support Europe, with the cooperation of 18 European organizations (powerpoint)

Aims:

- 1) develop crucial knowledge on the implementation of the Framework Decision in each of 27 EU State-Members;
- 2) perform a comparative analysis between the results achieved;
- 3) carry out a global evaluation on the implementation of the Framework Decision at an European level;
- 4) promote a discussion around the relevancy of the Framework Decision in what concerns victims' rights in the process of criminal justice.

Methodology:

The 2001 Framework Decision on victims within criminal proceedings can be considered a milestone, since it is the first international 'hard-law' instrument in the position of victims and therefore may contribute greatly to the improvement of the position of victims across Europe.

It was because of this that we chose the assessment of its implementation as the basis of our Project.

In what concerns the assessment of the implementation of the FD, 2 surveys were designed:

one Legal and one organizational

One of the responsibilities of APAV was to develop the organizational survey and to comment on the legal, which was undertaken by Intervict.

The need to have these two surveys was due to the fact that:

it was already identified by the Member States that there was a lack between a formal transposition of the FD and the existing of actual and adequate rights of victims that comply with their needs.

Therefore, practice in countries may well comply with the objectives of the framework decision, without underlying formal legislation.

Accordingly:

The organizational survey has the objective to gather information on the effectiveness of measures designed to implement FD provisions in practice.

The legal survey aims to understand the degree of implementation in a legal sense.

For example:

If we are trying to assess the implementation of security and protection of victims in the court house, we want to know:

if there is a law regarding this right

but also

if in practice there are the necessary conditions, procedures and resources to allow it

The questionnaires that we developed cover the whole of the Framework Decision and follows its sequence.

To answer our survey, experts on victim's issues were contacted in the 27 Member States in order to provide invaluable information on the legal and organizational situation of victims in their countries.

This network of contacts was created with the cooperation of:

Portuguese department of justice

Victim Support Europe (and it's network)

Directories of Services for victims of crime

APAV's network

Project partners

For the legal questionnaire, the definitions of key actors were the following:

Victim support-Organizations

Representatives of the department of justice

Independent academics working in the victimology field

For the organizational questionnaire, the Key actors defined were the following:

Civil society (NGO, community based organizations that develops their activities on the victims rights)

Public Bodies

Judicial sector (judges, probation officers, prison officers, lawyer, prosecutors)

Criminal investigation (police)

Research sector (academics, research institutes)

Today, one of our main objectives is to highlight some of the preliminary results that we gathered so far, since the report of Project Victims in Europe will be published in the end of this year.

The research team has collected, so far, 212 answers on the organizational questionnaire and 97 answers to the legal, from the 27 Member States.

I will start now presenting some of the data in what concerns the organizational implementation and Antony will end this presentation with the legal implementation key findings.

If you would like to accompany my presentation with the FD, in the briefcase that was given to you in the registration, you can find the booklet with the FD.

Taking into account the FD as a whole, according to the respondents' opinion and experience:

victims feel that they have an inappropriate role in the criminal proceedings

and that

they are inadequately recognized by the professionals involved in the criminal justice system

And what does this mean in more practical terms? Let's bring the analysis a little bit further...

For example in the HEARING AND PROVISION OF EVIDENCE, according to our analysis:

Victims are aware of the possibility to be heard and provide evidence

However:

Respondents answers show that the questioning by criminal justice authorities is extensive and intrusive

And therefore this questioning hampers victims' participation in the criminal justice system

RIGHT TO RECEIVE INFORMATION

In general victims have an easy access to information concerning:

The type of services or organizations where they can obtain support ;

The type of support available for them;

Legal advice or legal aid [note: however, respondents also feel that the legal aid that victims receive is inefficient.]

Where and how they can report an offence.

Despite this fact, it is important to underline the difficulty that victims have in the access to information on:

Their role in the criminal proceedings;

The conditions to obtain protection;

Special arrangements when they are resident in another Member State;

The outcome of their report.

Besides the difficulty for victims' to access information, it is also the respondents opinion that the information provided to victims by the criminal justice authorities does NOT reach victims on time.

And what is the status concerning the COMMUNICATION SAFEGUARDS?

It's insufficient and inefficient in what regards victims' understanding or involvement in the criminal proceedings.

VICTIMS EXPENSES WITH RESPECT TO CRIMINAL PROCEEDINGS

In what regards reimbursement of victims' expenses, we see that:

Victims are NOT aware of the possibility to receive reimbursement for their participation in the criminal proceedings;

Besides this, the procedures to apply for reimbursement are complex;

It does NOT reach victims on time;

Insufficient resources available for the reimbursement of expenses ;

Inadequate reimbursement of expenses.

RIGHT TO PROTECTION

In what regards the protection and privacy of the victims, respondents share the opinion that:

Victims do NOT feel secure to report a crime [nor their family or related persons];

Or to testify in court;

Inadequacy of proceedings in order to avoid the contact between the victim and the offender within the court house;

Poor conditions of the room available in the court house for the victims to wait until giving testimony are.

Privacy is NOT assured for victims;

Or sufficiently protected from the media.

RIGHT TO COMPENSATION

When we analyze the implementation concerning this right, data shows that:

Inadequacy of the compensation provided by offenders;

Complexity of the procedures to request for compensation;

Unreasonable duration of the proceedings in order to get compensation.

PENAL MEDIATION

According to the respondents' answers:

Victims are NOT aware of the possibility of penal mediation;

(And besides this, it is considered difficult to access to the procedures for penal mediation.

VICTIMS RESIDENT IN ANOTHER MEMBER STATE:

Data reveals a general lack of knowledge on the provision of rights to cross-border victims. Besides this, it's their opinion that:

Insufficient procedures in order to minimized difficulties faced when the victim is a resident in another Member State;

Uncoordinated cooperation between organizations of the different countries;

Insufficient cooperation between the authorities in order to protect the interests of these victims;

Unawareness concerning the possibility to file a complaint in their own country.

SPECIALIST SERVICES AND VICTIM SUPPORT ORGANISATIONS

The key actors' contacted share the opinion that:

Insufficient funding for Victims Support Organisations;

Victims have an easy access to victim support organisations;

Their needs are adequately met by victim support organizations.

TRAINING

Finally I would also like to show some key findings on the training for personnel involved:

Insufficient knowledge of professionals to deal with the victims;

Insufficient resources available to train professionals.

To end this presentation I would like to thank all the organizations and actors that cooperated in this Project and underline our commitment in pushing forward the victims' rights in the 27 Member States.

Role of the victim in the criminal process

Frida Petersson *Victim Support Scotland*

1. Overview of the status of the victim

The role and status of the victim in the criminal justice process has changed significantly with time. In older times, the responsibility for upholding law and justice laid with the citizens themselves. When a crime was committed, it was primarily a conflict between two parties, the offender and the victim. The resolution of the conflict was for the offender to repair or compensate for the damage he/she had caused. It was the responsibility of the victim, or the victim's family, to make sure that the balance was restored, through either compensation/repayment or revenge. This older type of criminal process was based on proportionality, the revenge should be equally severe as the initial attack against the victim, and the compensation should be equivalent to the value of what had been stolen or destroyed. It was up to the victim and offender to restore the balance between themselves.²

From the criminal process initially dealing with only the victim and the offender as two equal parties, the state has increasingly taken over the role of restoring justice. Victims' resort to personal vengeance became such a threat to the well-being of the society and control of the ruler, that the State felt obliged to interfere.³ From having been the one to demand justice and have an active part in the criminal process, the victim was put to the sideline and the State got to decide what should happen to the offender and what level of compensation would be reasonable, in accordance with the State's preferred purpose and aim of sentencing. This has impacted in victims' ability to participate. Some victims have described the criminal process as watching a play about their life, without playing a part themselves in the process.

In the UK, many argue that Anglo-Saxon times (400 – 900 AD) were the "Golden Age" of victims. During this time, victims had a real tangible role both in the prosecution process and in their right to compensation. By the 1870's, the victims' role in the prosecution process had almost been taken over completely by the emerging role of the State and the police. Apart from the obvious role in reporting crime to the police, the victim was hardly mentioned in criminal justice policy by the turn of the century.⁴

After the Second World War things started changing again. Victims were dissatisfied with a system that seemed to care more for the defendant's rights than the crimes committed against the victim, people started speaking out in support of victims, the science of victimology started to emerge and with it more recognition for the victim. The first widely acknowledged right of victims were right to compensation,⁵ and debate started regarding States' obligation to compensate innocent victims. This debate lasted through the 1950's and in 1964 the Criminal Injuries Compensation Authority was created. In the UK, victims of crime started to get a stronger role around 1980, and this could mainly be contributed to three factors⁶:

The development of crime victimisation surveys (first British Crime Survey 1982)

Research on gender and victimisation (The feminist movement has had a very strong impact on victimology and with this came a natural interest for how gender impacts on victimisation. This has not only highlighted crimes against women, but also opened the door for studies regarding violence/crimes against men)

² M Lindgren, K-Å Pettersson & B Hägglund, *Brottsoffer – från teori till praktik* (2003), p. 41-42

³ J Sgarzi & J McDevitt, *Victimology – a Study of Crime Victims and Their Roles* (2003), p. 334

⁴ S Walklate, *Imagining the victim of crime* (2007), p. 8-9

⁵ J Sgarzi & J McDevitt, *Victimology – a Study of Crime Victims and Their Roles* (2003), p. 335

⁶ S Walklate, *Imagining the victim of crime* (2007), p. 11

Increased understanding of the impact of crime

Increasingly, States are now beginning to recognise victims' rights to take part in the criminal justice process. The main aim of the trial is however to prove guilt of the offender, who is innocent until proven guilty. From the point of justice, there is therefore a need to question victims' testimonies and information to find out if what they are saying is true. However, this must be balanced with respecting victims' rights and ensuring that the process of giving evidence is as smooth as possible, limiting the risk of revictimisation.

The concept of justice and fairness evolve with time. It seemed fair at one point for the victim to seek personal vengeance against the offender. Then it seemed fair that the State should step in to prosecute the accused, setting up extensive safeguards to protect the rights of the accused against the power of the State, while insulating the victim from the process and further harm. It is now time for the victims to enter the equation again and in my view promote a more triangular form of justice between the victim, who is entitled to compensation and reparation, the offender who should be punished and rehabilitated, and the State that has the overall responsibility for upholding justice and public order.

2. Individual victims' rights

I would now like to look closer at how this balance is struck regarding a few articles from the Framework Decision, such as victims' right to participate, right to protection and right to receive information - what do these rights mean in different countries?

I will look into these articles and give a short overview over the position of Scotland, before opening up for discussion where the participants can discuss their respective criminal systems.

A) Right to participate

When it comes to participation in the trial process, victims in common law countries and adversarial judicial systems are still often seen only as witnesses of the Crown/Prosecutor with no separate legal standing as a party. They are used, almost exclusively as a tool of evidence. Legal scholar Richard Abel stated "The victim becomes an embarrassing anachronism – necessary to start the process but an inconvenience thereafter".⁷

Without the initial report of the crime from the victim to the police, most crimes would go undetected, unaddressed, and unprosecuted. Once the process is started however, victims still have very little control how the case will be handled and what its result will be. The major criminal justice stakeholders (i.e. police, prosecutor, defence attorney and judge) not the victim maintain the balance of control over a particular case.

From April 1, 2009 victims in Scotland, in cases heard in a High Court or in cases where a Sheriff sits with a jury (courts of solemn jurisdiction) can choose to make a written victim statement in their own words telling the court of the emotional, financial and medical impact a crime had on them. The victim will be invited to make a statement once a decision has been made to take the case to trial. If the victim of a crime is under 14 a parent or carer can complete a statement on their behalf. If the victim died as a result of the crime up to 4 near relatives can prepare a statement. Should the accused be found guilty the statement will be given to the court before a sentence is passed. The Judge or Sheriff will consider the statement as part of his or her consideration of all the circumstances affecting the case and decide what weight should be given to it. As such, the statement will not always have an effect on the sentence, but it may have an impact.

⁷ R Abel (1998), cited in J Sgarzi & J McDevitt, *Victimology – a Study of Crime Victims and Their Roles* (2003), p. 371

If we look at victims' rights to participate from a criminal justice perspective, it is very important to ensure that victims' have a proper role in the process, but this role must not be over exaggerated and adversely impact the rights of the accused to a fair trial; remember he/she is innocent until proven guilty. We need to balance victims' right to participate with the impartial assessment of all facts presented in the case and the risk of victims' statements unjustifiably impacting on the sentence.

B) Right to information

Victim's right to information has progressed in Scotland during the last few years. When reporting a crime, the Police should inform the victim of the services offered by Victim Support Scotland. If the case goes to prosecution, the Victim Information Advice Service (VIA) has been established as part of the Crown/Prosecutor Service, to give victims and witnesses case specific information. The Government has set up an information website for victims and witnesses of crime, taking them through the entire criminal justice process and what is expected of them. <http://www.victimsofcrimeinscotland.org.uk/> If an offender is sentenced to prison for 18 months or more, the Victim Notification Scheme, administered by the Scottish Prison Service, allows for victims to receive information regarding the offender such as release date, date of death if the prisoner dies before release, if the prisoner is transferred to a place outside Scotland, if the prisoner becomes eligible for temporary release or if the prisoner escapes from prison. This however demands that the victim signs up to receive the information, otherwise they will not. Many victims in Scotland still feel left in the dark, that they are not informed of what is happening, what the police is doing to find the offender, if someone has been arrested for the crime etc. Some victims claim they do not receive any information at all about what is happening in their case until they receive a letter in the post citing them as a witness. If the case does not go to court, many victims are never informed by the police what happened to the case and why it did not proceed. This is particularly the case with less serious, high volume crimes.

C) Right to protection

Scotland has adopted legislation regarding particularly vulnerable witnesses, the Vulnerable Witness (Scotland) Act 2004. This applies to anyone giving evidence in a Scottish Criminal Court, including victims. It enables special measures to be given to the witness when giving evidence. For instance, the witness can give evidence behind a screen, CCTV, via remote site or through commissioner. For children under the age of 16, the presumption is that they should not be given evidence in the open court and are automatically entitled to special measures to giving evidence from a remote site or through CCTV.

Scottish courts buildings are often old, traditional buildings where there is only one entrance where both the accused and the victim and all family will come in. Most courts try to establish separate waiting rooms for victims, but this is not always possible due to the limited space in the court. That it is an aspiration. The Framework decision however has only stated this to be a progressive right, "Member States shall progressively provide that court premises have special waiting areas for victims", so separate facilities is today this is more of a legitimate aim and aspiration rather than a right for the victim.

In Scotland, draft legislation is just as we speak working its way through the Scottish Parliament to allow witnesses to give anonymous witness statements; the accused will not know who the witness is. The anonymity of witnesses is a very controversial measure for Scotland, but it is not a new invention; it features in the Council of Europe Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence and is already in place in some jurisdictions across Europe, for instance in England & Wales.

The rights of victims in the criminal proceedings in Austria

Lisa Puehringer **University of Vienna**

1. Introduction

The latest big step forward in the development of victims' rights in Austria was the commencement of the new code of criminal procedure (CCP), which entered into force on the first of January 2008.⁸ Since then the victim takes a complete new status of party in the proceedings, irrespective of acting as a civil claimant. The first small amendments came into force in 2006⁹ followed by the comprehensive reform in 2008, an impulse of the Framework Decision¹⁰ can not be denied.

2. The definition of the victim

One essential improvement of the comprehensive reform 2008 was the implementation of a legal definition of the term "victim" in Sec 65 CCP, right at the beginning of the chapter, where the rights of victims are laid down. A legal definition, which is acceptable for all parties, took a long time of discussion and is still not over. The code of criminal procedure now uses the term "victim" rather than "injured" for example, which can be seen as the success of many negotiations with the victim support organisations.

The law distinguishes three kinds of victims depending on the level of vulnerability, who have certain rights irrespective of acting as a civil claimant:

According to the new Sec 65 n°1 CCP a victim shall mean:

- a) Every person, who could have faced violence or dangerous threat or who could have been affected in his/her sexual integrity by an intentional criminal act. It has to be emphasized that damage is not required. To cite some examples for offences, which are covered: bodily injuries, compulsion, dangerous threat, but also offences against the property like robbery, theft accompanied by threat, black mail, and also victims of stalking.
- b) The second category is intended for the case that the death of a person could have been caused by a criminal act. If this is the case the husband or wife, partner of life, relatives in direct line, brothers or sisters are victims. Other relatives are only considered victims if they have been witnesses to the act.
- c) The third category is a so-called sweeping-clause: Every other person, who has suffered from harm, caused by the criminal act or could have been damaged in his/her protected goods.

The last category is not limited only to natural persons; also legal persons, who have been damaged might benefit from the victims' rights.

Victims of an attempted act are also included in this definition, making it wider than the definition of the Framework decision.

The classification in a special category is important because the rights of victims differ depending on the category.

⁸ BGBl I 19/2004.

⁹ BGBl I 119/2005.

¹⁰ Council Framework decision of 15 march 2001 on the standing of victims in criminal proceedings (2001/220/JHA, AbI Nr L 82/1).

3. The participation of victims as a procedural principle

The participation of victims as a procedural principle, thus binding the police, the public prosecutor and the judge, is regularized in Sec 10 CCP. The placement of this provision next to the principle of immediacy and the principle of oral proceedings illustrates its importance. The regulation states that victims are allowed to participate in the criminal proceedings and that all involved parties are obliged to treat the victim with respect for their dignity and their strictly personal area of life, for instance the passing of pictures or personal data should be avoided. Already in this section the parties are urged to respect the rights and interests of the victims and to inform them about their essential rights and about the possibility to obtain compensation and assistance within the criminal proceedings. Furthermore, this section stipulates that the prosecutor, as well as the judge, have to observe the victim's interest to restoration before concluding the procedure.

4. Victims' rights

Basic requirement for an effective participation is that the victims have knowledge about their rights. Without this condition effective participation is not possible.

4.1 Information of the victim

This is also the reason why the Framework decision in one of the first articles stipulates the right to receive information. While Article 4 of the Framework decision includes two types of information (information the victim should receive without any request and information the victim has to ask for) the Austrian legislator implemented in Sec 70 CCP a general obligation to advise the victim on the essential rights. Special duties to inform the victim are foreseen for the case that the victim might be injured in his/her sexual integrity in Sec 70 para. 2 CCP. As soon as there is a certain suspect both, the police and the public prosecutor are responsible for the information of the victim. The possibilities to abstain from the right to receive information are very rare and found only punctual.¹¹

4.2. Participation of the victim

In Sec 66 CCP the rights of victims are specified. In this context some of the most important rights should be named:

For the whole criminal proceedings the victim has the right to appoint a representative and to receive translation aid. The representative might be a lawyer, a person of a victim support organisation or another appropriate person (Sec 73 CCP). The representative should advise and support the victim. For this purpose he/she can exercise all victims' rights. This appointment of a representative has to be distinguished from other forms of judicial support, like the judicial assistance under Sec 66 para. 2 CCP.

The right to receive translation aid covers the assistance of a translator for the interrogation of the victim and for the contact with his/her lawyer. The regulation for the defendant (Sec 56 CCP) is applied correspondingly. A translation of the file content is only provided under certain conditions.

The victim is entitled to inspect files to the same extent as the defendant (Sec 68 CCP). This means that already in the pre-trial phase the victims can ask for information concerning their criminal proceedings. This right may only be denied or restricted if otherwise the purpose of the investigations or an uninfluenced statement of a witness is endangered.

¹¹ For example Sec 221 CCP.

All victims have to be notified of the progress of the proceedings; the concerned regulations are enumerated conclusive in Sec 66 para. 1 n°4 CCP, for instance: Victims of the first category and victims of domestic violence have to be notified of the release of the accused from custody before trial; other victims only if they requested it (Sec 177 para. 5 CCP). All victims have to get notice of the dismissal of the pre-trial proceedings through the public prosecution (Sec 194 CCP) or if a diversion is planned and there has been no restoration of the damage of the criminal act (Sec 206 CCP). In the last case the victim has to be advised that he/she has a right to give his/her view before the withdrawal of prosecution. If the procedure closes with a diversion the victim has to be informed in key words about the reasons for it (Sec 208 para. 3 CCP).

To provide the opportunity for an active participation the victim is allowed to participate in certain investigation measures like a contradictorily examination of witnesses and defendant or at the reconstruction of the criminal offence (Sec 66 para. 1 n° 6 CCP). In addition the victim can attend the trial and is allowed to question the accused, witnesses and experts. Moreover the victims are entitled to be heard concerning their claims (Sec 66 para. 1 n° 7 CCP).

To effective the above mentioned rights the victim must have instruments which safeguard the compliance with these regulations. Since the victims' rights are qualified as subjective rights, the victim may lodge an appeal during the investigation phase if, for example, the obligation to grant the victim access to the records is violated (Sec 106 CCP). Another instrument of control is the right to request the continuation of the proceedings under Sec 195 CCP, in case the public prosecutor closes the procedure in the pre-trial phase. As the victim has to be notified of the closing of the procedure he/she has the possibility to request the continuation of the proceedings within 14 days (or three month in case of no notification) provided that the law was violated or incorrectly used or if there are substantial doubts about the reasons for the closing or if new facts or evidence are available.

The right to request the taking of evidence is only open to victims who declare that they want to attend the procedure as a civil claimant (Sec 67 para. 6 n° 1 CCP). If the victim joins the procedure as a civil claimant he/she is entitled from the beginning of the investigation phase to request takings of evidence in the same extent as the defendant (Sec 55 CCP). The evidence can also concern the question of guilt. Another improvement concerning the civil claimant is that if an expert is appointed for the assessment of bodily injury or damage to the health of a person, he/she also has to be requested to establish the periods of pain. Thereby the compensation for immaterial damage should be encouraged (Sec 67 para. 1 CCP).

4.3. Protection of the victim

Finally only a few measures for the protection of victim in the criminal proceeding should be mentioned, since the two most important measures to protect the victim (adversary questioning according to Sec 165 CCP and the right to psychosocial and juridical assistance, which is granted to victims of the first two categories according to Sec 66 para. 2 CCP) were subject to another presentation.

The victim as a witness is entitled to give anonymous witness statements provided that otherwise the victim or others would be in severe risk of life, health or freedom (Sec 162 CCP). Victims of sexual violence are exempted from answering certain questions concerning details of the criminal act, and all other victims concerning their strictly personal area of life (Sec 158 CCP).

In contrast to the Framework decision no regulation concerning separate waiting areas is foreseen in the law. The reasons for this loophole are more of a practical and financial nature, since structural measures are difficult and expensive to realize. As this situation is unsatisfying, the involved persons (judges, social or juridical assistants) try to find other ways to protect the victim. Some judges try to avoid a meeting of the victim and the accused in summoning the victim to a different time or at a different place, others use rooms

next to the place of the hearing as waiting rooms. Since there is no regulation, these measures of protection are up to the particular judge and/or to the commitment of the juridical or psychosocial assistant.

5. First experience and conclusion

Since the new code of criminal procedure is in force for nearly two years, first experiences are available to assess the situation of victims in Austria. Two examples will be picked out.

First, the regulation concerning the notification of the victim of the day of trial as it illustrates, how a well-intentioned regulation can also affect the victim adversely.

As mentioned above the victim may be present at the trial if he/she wants to, thus notification of the day of trial is required. Until the first of June 2009 Sec 221 CCP was in force, stating that all victims have to be notified of the day of trial except from victims who renounced this right or whose stay could not be explored within reasonable time. This right of notification was independent from the duty of the victim as a witness to comply with a summons. The results were the following: It happened that the victim achieved two notifications: one as a "victim" that he/she is allowed to be present at the trial if he/she wants to and another one as a witness with the obligation to comply with the summons. Another problem was that the simply notification scared the victims because they thought that they have to testify another time in trial (while they were exempted from testifying after a separate questioning in the pre-trial phase). The victims were totally confused and judges achieved calls from victims who did not know what to do etc. The situation was dissatisfying for all involved persons. This is why the legislator implemented a new regulation concerning the notifications of victims, which aimed to satisfy the victims' demand and entered into force on the first of June 2009.¹² It foresees the opposite: If the victim has to give witness statement in trial or obtain assistance for the proceeding, notification of the day of trial is guaranteed. Other victims will be notified of the date of trial only if they have asked for this during their contradictory examination in the pre-trial phase.

Furthermore, first data are available to show the acceptance of the remedy to request the continuation of the proceeding (Sec 195 CCP), and what is even more interesting the rate of success, meaning the number of procedures which were continued after an application was filed. In 2008, 2575 applications were filed whereof in 14 percent the application was allowed and the proceedings were continued. Interesting is the regional spreading; the success rate differs from under 10 percent (in the court district of Vienna) to 23 percent (in the court district of Linz). These figures show that the implementation of this right of control was definitely justified.

The implementation of the new code of criminal procedure stipulated comprehensive rights to information. However, there are two regrettable loopholes in the code of criminal procedure which are most likely not in conformity with the Framework decision.

The notification of the outcome of the criminal proceeding, like a conviction or an acquittal is not guaranteed to every victim. Only if the victim has juridical assistance or if the victim joins the process as a civil claimant information of the outcome of the proceeding is guaranteed. However, this information would be at least as essential as the information about the dismissal of the pre-trial proceeding and much more essential than the information that the competency of the public prosecution has changed, which was foreseen in Sec 66 para. 1 n° 4 CCP until the first of June 2009.

Furthermore there is no regulation concerning the information about the release of the offender from custody or in case of a parole and no information about privileges, like a temporary home leave. The lack of information concerning the release at the end of imprisonment is not as significant if the victim has notice of the sentence. However, the lack of information plays a decisive role in case of a parole or privileges.

¹² BGBl I 52/2009.

Considering that regulations concerning the notification of victims should be primarily oriented on the victims' need, the legislator should try to fill this loophole. One possibility would be, that the victim has to ask, if he/she wants to be informed of the premature release. Maybe this opt-in possibility should be limited to vulnerable victims.

The implementation of the new code of criminal procedure improved the situation of victims significantly. One can only hope that the practical implementation will also forge ahead.

The Psychosocial response to terrorist attacks and other Major Disasters: From the Portuguese example to the European Paradigm

Bruno Almeida de Brito

The psychosocial support after major disasters or after critical incidents is not a recent concern. Despite most of the references of psychosocial support are directly related to war scenarios, it is not uncommon to find actions or mobilizations of caring for disaster survivors after earthquakes, volcanoes' eruptions, urban fires, etc.

Since 2001, and with the 911 attack to the EUA, world security as entered in a new era. The global feeling of safety was severally changed. In Portugal, the first time that psychosocial in disasters was noticed with media highlights was after a major disaster that involved the collapse of a bridge in Castelo de Paiva, March 2001, were 59 persons lost their life. It was the first time that the Portuguese government dispatched a mental health team that included a psychiatrist and several psychologists to give support to the affected community.

Little was known until this time in Portugal regarding psychosocial support. This was not an expertise area that was taught in the main psychology universities (in fact, this is still a reality in the present). The strong relation to the development of Post Traumatic Stress Disorder after a critical event was, in Portugal, connoted with the African former colonies war. There was little or no concern on giving support to victims or operational personnel after a traumatic event.

The event of Castelo de Paiva and the attack to the Twin Towers in New York changed this scenario. The suffering of these events survivors entered in the Portuguese houses thru the media. An urge of having some kind of support was claimed and there were a few psychologists that understood that conventional psychology or psychotherapy was not the adequate answer.

In December 2001, Cacilhas Fire Department admitted the first psychologist with the main objective of implementing a crisis psychosocial intervention cabinet, to support operational teams and the community. The main difference is that it was the first time that a psychologist dressed a firefighter's uniform to intervene directly on the critical events, side-by-side with operational pre-hospital or search and rescue teams. Soon this psychologist realized that this new approach of psychosocial support required special training and different skills that could lead to a logical and efficient intervention, minimizing survivors suffering and helping operational staff to better cope with the traumatic exposure. The need of training was felt not only in the psychosocial area but also in the basic common operational fields such as first aid, operational communications, civil protection law, emergency management, etc. It was obvious that this support should take a role "out there on the streets", where the disaster strikes, side-by-side with all the different technical support that usually intervene in accidents or disasters.

In 2002, after Cacilhas Fire Station's example, several other organizations, such as Security Forces, Medical Emergency, Armed Forces, Civil Protection, etc., started to organize their own teams. Meanwhile, the Portuguese Air Traffic Controllers started to organize their own psychosocial support, based on the Critical Incident Management Model, which ended out to be the first CISM¹³ team in Portugal.

¹³ The "classic" CISM model was developed by Dr. Jeffrey Mitchell of the University of Maryland for use with emergency services personnel and promulgated by the American Critical Incident Stress Foundation, which was founded in 1989 (the name was changed to the "International Critical Incident Stress Foundation" in 1991 to reflect the expansion of the model beyond US boundaries). Initially developed for firefighters, paramedics and police officers, use of the Mitchell Model has been expanded for use in natural disasters, school-based incidents, and a variety of other settings, including, in recent years, the U.S. military.

In 2001, the Belgian Ministry of Health with the support of the European Union published the “PSYCHO-SOCIAL SUPPORT IN SITUATIONS OF MASS EMERGENCY, European Policy Paper concerning different aspects of psycho-social support for people involved in major accidents and disasters”. This document was very important because it stated a European baseline to discuss best practices and standardization of procedures regarding psychosocial intervention. This document is characterized by a strong emphasis on the community response, more than a “how to” manual to deal with the psychological and behavioral symptoms showed by disaster survivors.

In 2003, after the Iran (Bam) earthquake, the Portuguese Government dispatched to the field a search and rescue and medical team that had psychosocial support after the mission. It was the first time that a operational governmental mission sent abroad that had the concern for mental health after this heavy work. The same happened after Algeria and Morocco quakes.

The first time that Portuguese psychologists were integrated in a Governmental humanitarian mission was after the 2004’ tsunami. Two psychologists were dispatched with a medical team to Sumatra, Indonesia, and worked with the population of Banda Aceh, one of the most damaged places and with the higher human life losses.

The European Civil Protection Mechanism (Monitoring and Information Centre – MIC) as included in the disaster supporting areas the psychosocial response, for teams and coordinators. The first time that this valence was tested was during the EULUX exercise in Luxemburg, in 2007. In this Civil Protection exercise it was possible to practice together and share know-how, between Portuguese and Luxemburg teams.

In 2007, the Netherlands approved a very interesting document called “MULTIDISCIPLINARY GUIDELINE, Early psychosocial interventions after disasters, terrorism and other shocking events”, that sets a new paradigm of how to intervene after disaster situations. This document had a high political acceptance in this EU country, and it can be a new baseline for a standard European Guideline for common skills for psychosocial support in disaster’s providers, and for common ideas of how to manage the psychosocial outcomes of disaster survivors.

The presented chronology of events reflects a growing concern of having effective and specialized support to individuals that go on thru traumatic experiences. It also reflects that this concern is not only from psychologists, but it is (more and more) demanded by populations and recognized by governments. In a global reality such as the European Community, critical incidents can happen in any place, with several and very different causes. The consequences of that event will affect local communities but also the International community, since the exchange of population is growing each day, and the proliferation of information through the media is even more common.

Due to the strong impact that terrorist attacks and major disaster situations have in population, the support should be faced as a long term and multi organizational response, and not only focused in first response after the impact. This is why networks such as Victim Support and the terrorism victim status are so important, not only for the individuals, but also for the strengthening of the community. There have been in Europe several forums and projects (most of them sponsored by the European Community), where related issues are discussed and experiences are shared. At this moment there is a need of some agreement of understanding regarding how should this work be conducted / managed, which skills are required for professionals that want to dedicate their lives helping other in crisis situations, which kind of relation should exist between different organizations who are already responsible to respond to disasters (such as police, firefighters or medical emergency teams) and which role play the volunteers that in disaster situations want to help. Also questions as in which kind of crisis should the support be available and how is it required do be mobilized to the field, for how long should it subsist before being substituted by regular support services, such as social security or national health services, are yet to be consensual and have conclusive answers.

So, in conclusion, we can affirm that the needs for the near future are:

List psychologists on a contact network;

Set up a EU curriculum of training and skills for crisis intervention providers;

Provide field training and exercises;

Setup protocols of activation, operations and refer to a post-crisis network (normal mental health services).

Victims, themselves, also play a very important role on their own recovery and manifestation of needs. That is why it should not be forgotten that it is very important to establish European recognition for terrorism and disaster victims. The support of Victim Support Associations and Networking is one of the strongest possibilities to give the victims voice to represent themselves and to arrange long term support.

Based on:

Belgian Ministry of Health (2001), "PSYCHO-SOCIAL SUPPORT IN SITUATIONS OF MASS EMERGENCY, European Policy Paper concerning different aspects of psycho-social support for people involved in major accidents and disasters", Brussels;

Impact Knowledge center (2007), "MULTIDISCIPLINARY GUIDELINE, Early psychosocial interventions after disasters, terrorism and other shocking events";

http://ec.europa.eu/justice_home/funding/expired/pilot_victims_terrorism/funding_pilot_victims_terrorism_en.htm

<http://www.icisf.org>;

<http://www.impact-kenniscentrum.nl>

The international statute of victims of terrorism

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I. THE APPROACH OF INTERNATIONAL LAW TO VICTIMS

Traditionally International Law (in other words, States) has paid less attention to victims. Due to the predominantly interstate structure of the International Community, international norms have been constructed in order to protect the general interest and objectives of the State. In this context, attention has been given to persons or individuals only within some particular areas of international order. This is the case, for example, in those matters concerning human rights, international criminal law (with regard to the international criminal responsibility of individuals)¹⁴ and international humanitarian law. However, in each of these branches the consideration given to victims differs greatly. So, on the one hand, in international law on human rights (which is built from the exclusive point of view of the state as responsible for the non enforcement of international obligations), victims affected by the breach of human rights by non-state actors are not taken into consideration. On the other hand, in international criminal law and in international humanitarian law victims can acquire this condition as a consequence of acts carried out by individuals exercising public functions as well as by non-state actors. In both cases, international responsibility concerns the individuals, and victims are taken into account. However, it must be said that this only occurs to a reduced extent.

Secondly, the attention of International Law to victims is very recent. The first international norms on the matter concerned victims of crime. So, the European Convention on the Compensation of Victims of Violent Crimes, of 24 November 1983¹⁵, and on the universal level the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹⁶ adopted on 29 November 1985 by the United Nations' General Assembly.

The next norms did not arrive until the (XXI) 21st Century. This is the case, with regard to victims of crime, of those adopted inside the European Union (EU): the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings¹⁷ and the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims¹⁸, which is based on the objective of the European Community to abolish obstacles to the free movement of persons and services between Member States.

Later on, those international norms concerning victims of terrorism and victims of gross violations of international human rights law and serious violations of international humanitarian law were established. Concerning the first issue, victims of terrorism, the Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA)¹⁹ was established, article 10 of which takes into account the protection

¹⁴ See C. Fernández de Casadevante Romani, (ed.), *Derecho Internacional de los Derechos Humanos*, 3rd. ed., Madrid, 2007.

¹⁵ Which is the first European international instrument which confronts the problem of victims of violent crimes.

¹⁶ Adopted by General Assembly Resolution 40/34 of 29 November 1985 it is based on Article 18 of the Universal Declaration on Human Rights, adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948. Article 8 contains the right of everyone to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. See Bassiouni, Ch., 'Reconnaissance internationale des droits des victimes', in SOS ATTENTATS (eds.) *Terrorisme, victimes et responsabilité pénale internationale* (2003) 134-185.

¹⁷ OJEC, L 82, of 22 March 2001.

¹⁸ OJEC, L 261, of 6 August 2004.

¹⁹ OJEC, L 164, of 22 June 2002.

and assistance given to victims. Also in the European arena, the Guidelines on the Protection of Victims of Terrorist Acts²⁰ was adopted by the Council of Ministers of the Council of Europe on 2 March 2005.

With regard to victims of gross violations of international human rights law and serious violations of international humanitarian law, the Basic principles and guidelines of the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law was adopted by the UN Commission on Human Rights in its Resolution 2005/35 of 19 April 2005²¹.

Finally, concerning victims of violations of international criminal law, no specific norms exist except those of the statutes of the existing international criminal Courts but only the International Criminal Court gives a significant role to this category of victims.

Third, as just seen, the approach of International Law to victims has been carried out according to the category or type of the victim. Accordingly to this approach, different categories of victims have been identified on the legal field: victims of crime²², victims of abuse of power²³, victims of gross violations of international human rights law²⁴, victims of serious violations of international humanitarian law²⁵, victims of violations of international criminal law²⁶ and, finally, victims of terrorism²⁷.

Nevertheless, it should not be forgotten, they all are victims of crime. Only the type and the seriousness of the crime changes, but they are all victims of crimes. From this point of view, an international common legal

²⁰ *Council of Europe*, Committee of Ministries-CM/Del/Dec(2005)917.

²¹ UN E/CN.4/2005/L.10/Add. 11. It was adopted by a recorded vote of 40 to none, with 13 abstentions.

²² According to Article 1.a) of the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings: "victim" shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State;". It also contains a definition of "victim support organisation". That is to say, "a non-governmental organisation, legally established in a Member State, whose support to victims of crime is provided free of charge and, conducted under appropriate conditions, complements the action of the State in this area;".

Unlike the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, the European Convention on the Compensation of Victims of Violent Crimes, of 24 November 1983 does not include a definition of "victim". It only specifies that the State shall contribute to compensate: "a) those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence; b) the dependants of persons who have died as a result of such crime" (art. 2.1).

²³ Which are: "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights" (Paragraph 18 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on 29 November 1985 by General Assembly Resolution 40/34).

²⁴ Which are: "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law" (paragraph 8 of the "Basic principles and guidelines of the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law" adopted by the UN Commission on Human Rights in its Resolution 2005/35 of 19 April 2005).

²⁵ They are also object of the "Basic principles and guidelines of the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law" adopted by the UN Commission on Human Rights in its Resolution 2005/35 of 19 April 2005. See the precedent footnote.

²⁶ Violations of international criminal law currently fall under the jurisdiction of three international: the International Criminal Court for the former Yugoslavia, the International Criminal Court for Rwanda and the International Criminal Court (ICC). However, only the Statute of the ICC and the Rules of Procedure and Evidence expressly envisage victims. The Statute of the ICC on Articles 68, 75 and 79. The Rules of Procedure in Section III of Chapter 4 (entitled "Provisions relating to Various Stages of the Proceedings") which is devoted to victims and witnesses.

²⁷ Cf. Article 14 of the Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA) and the Guidelines on the Protection of Victims of Terrorist Acts adopted by the Council of Ministers on 2 March 2005.

statute of victims based upon the different existing international norms with regard to the different categories of victims could be constructed. Moreover, it is possible to state that such an international statute exists. It is a statute built on international norms of a general (United Nations) and of a regional character (in Europe, the Council of Europe and the European Union).

Finally, and with regard to the concept of victim, although the different existing international norms generally make their own definition of victim with regard to the category of victim in question, it is possible to build upon them a general concept of victim independent of the category of the latter.

According to these norms, two kinds of victims could be envisaged: direct and indirect victims. The concept of direct victims is based upon the following elements:

- they are natural persons who, individual or collectively,
- have suffered harm, including physical or mental injury,
- emotional suffering or
- economic loss, and
- such harm has been directly caused by acts or omissions that are in violation of the criminal law of the concerned State²⁸.

On the other hand, are considered indirect victims:

- relatives or dependants with an immediate relationship with the direct victim
- persons who have suffered harm while intervening to assist victims in distress or to prevent victimization.

II. THE LACK OF AN INTERNATIONAL DEFINITION OF TERRORISM.

A DIFFICULTY WHICH CAN BE SOLVED

The lack of an international definition of terrorism (in order to define what a victim of terrorism is) can be circumvented in two ways. On the one hand, there is no doubt that even in the absence of an internationally generally accepted definition of terrorism, all types conducts generally considered as terrorism by International Law (and by national law) are crimes. On the other hand, the European Union Council Framework Decision (2002/475/JHA) of 13 June 2002 on combating terrorism clearly defines which intentional acts constitute terrorism. Consequently victims of such acts are victims of crime as well as victims of terrorism.

Due to the lack of time for my exposé, I will limit my analysis only to the European Union. Here, the absence of a definition of terrorism is in a certain way covered by the Council Framework Decision (2002/475/JHA) of 13 June 2002, on combating terrorism, which, in Article 1, lists a series of intentional acts which are considered

²⁸ Instead of that general concept of direct victim, "victims of abuse of power" are "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights" (Paragraph 18 of the Declaration).

“terrorist offences” and oblige States Members to take the necessary measures to ensure that such intentional acts are defined as offences under national law.

Such intentional acts should be committed with one of the following aims:

- seriously intimidating a population,
- unduly compelling a Government or international organisation to perform or abstain from performing any act,
- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

According to Article 1 the following intentional acts shall be deemed to be “terrorist offences”:

- (a) attacks upon a person's life which may cause death;
- (b) attacks upon the physical integrity of a person;
- (c) kidnapping or hostage taking;
- (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
- (i) threatening to commit any of the acts listed in (a) to (h).

Although the intentional acts listed in Article 1 cover a large concept of “terrorism” they do not exhaust its content. For example, from the point of view of Spain, several intentional acts committed by the terrorist

organization ETA are not included. It is the case of political prosecution²⁹, extortion³⁰, threat and the urban violence termed “kale borroka”³¹ denounced by the Commissioner for Human Rights of the Council of Europe in his Report for the Committee of Ministers and the Parliamentary Assembly during his visit to Spain and the Basque Country, on February 2001³².

Nevertheless, such gaps –like others- can be covered by the qualification of such intentional acts as terrorism under national law. In the meantime, victims of such intentional acts have the statute of victims because such intentional acts are crimes under national law, so that such victims are, at least, victims of crime (in Spain, also, victims of terrorism³³).

The Council Framework Decision (2002/475/JHA) of 13 June 2002 on combating terrorism has been recently amended by Council Framework Decision (2008/919/JAH) of 28 November 2008, which provides “for the criminalisation of offences linked to terrorist activities in order to contribute to the more general policy objective of preventing terrorism through reducing the dissemination of those materials which might incite persons to commit terrorist attacks”³⁴.

With this purpose, the Council Framework Decision (2008/919/JAH) of 28 November 2008 obliges States to take the necessary measures to ensure that offences linked to terrorist activities include the following intentional acts:

- (a) public provocation to commit a terrorist offence;
- (b) recruitment for terrorism;
- (c) training for terrorism;
- (d) aggravated theft with a view to committing one of the offences listed in Article 1(1) of the Council Framework Decision (2002/475/JHA) of 13 June 2002, on combating terrorism, just quoted;
- (e) extortion with a view to the perpetration of one of the offences listed in Article 1(1)

²⁹ Which has forced more than 150.000 basques citizens into exile since 1984.

³⁰ Gap covered by Council Framework Decision (2008/919/JAH) of 28 November 2008, which provides “for the criminalisation of offences linked to terrorist activities in order to contribute to the more general policy objective of preventing terrorism through reducing the dissemination of those materials which might incite persons to commit terrorist attacks” (OJEU, L 330, of 9 December 2008).

³¹ That is: “Violence in the streets, which ranges from attacks on shops, the burning of buses and street furniture, attacks against municipal councillors, and members of parliament, journalists and their families, including the putting up in the streets of posters with the names of people denounced as pro-Spain and who, in many cases, have subsequently become victims of attacks, in certain cases fatal, is in itself a key factor for the (justified) feeling of insecurity in which many directly affected citizens live. (According to local estimates approximately 3000 persons are specifically targeted in this way). In all cases, this violence is also directly responsible for a part of the community being unable to exercise freely its civil and political rights” (Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Spain and the Basque Country, CommDH(2001)2, Strasbourg, 9 March 2001, page 7).

³² The visit took place the 5-8 February (CommDH(2001)2, Strasbourg, 9 March 2001). Other visits on 2003 (CommDH(2001)2, followup) and 2005 (CommDH(2005)8). About victims of terrorism in the Basque Country see F. Lozano Contreras, “Enforcement of the Notion of Due Diligence in the Report of the Human Rights Commissioner of the Council of Europe Regarding his Visit to the Autonomous Basque Community”, *Spanish Yearbook of International Law*, vol. VIII, 2001-2002, pp. 17-52; C. Cuesta, *Contra el olvido. Testimonios de víctimas del terrorismo*, Temas de Hoy, Madrid, 2000. More recently, C. Fernández de Casadevante, *La nación sin ciudadanos: el dilema del País Vasco*, ed. Dilex, Madrid, 2006.

³³ In Spain political prosecution, extortion, threat and urban violence are crimes under Spanish Criminal Code.

³⁴ Paragraph (7) of its Preamble (OJEU, L 330, of 9 December 2008).

of the Council Framework Decision (2002/475/JHA) of 13 June 2002, on combating terrorism, just quoted;

(f) drawing up false administrative documents with a view to committing one of the

offences listed in Article 1(1)(a) to (h) and Article 2(2)(b) of the Council Framework Decision (2002/475/JHA) of 13 June 2002, on combating terrorism, just quoted.

III. THE APPROACH OF INTERNATIONAL LAW TO VICTIMS OF TERRORISM

1. From obscurity to recognition

Victims of terrorism, as well as responses to terrorism, have been ignored by International Law (that is by States) until recently. For example, it was not until the United Nations' Vienna Conference on human rights in 1993 that the relationship between terrorism and human rights was retained by the UNO³⁵. Since that time two changes have taken place. On the one hand, since 1994, action of the General Assembly related to terrorism has been implemented under the title "Human Rights and Terrorism"³⁶ and resolutions adopted since that period are characterized by the following:

- the right to life is asserted as the "most essential and basic human right"³⁷;
- the General Assembly states its serious concern about "the gross violations of human rights perpetrated by terrorist groups"³⁸.

On the other hand, also since 1994 and after resolution 49/1985 of 23 December, all the resolutions adopted by the General Assembly under the title "Human Rights and Terrorism" contain references to victims of terrorism. All these resolutions declare the solidarity of the General Assembly with the victims of terrorism and request the Secretary-General to seek the views of Member States on the possible establishment of a United Nations voluntary fund for victims of terrorism as well as the ways and means to rehabilitate the victims of terrorism and to reintegrate them into society³⁹.

The progressive emergence of victims within the framework of the EU analysed in the preceding pages took a further step with the Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA)⁴⁰. Article 10 of this document takes into account the protection and assistance given to victims. According to this article, and related to the concept of "terrorist offences", which is developed in the long list of Article 1 of

³⁵ See 1993 Vienna Declaration and Programme of action, UN Doc A/CONF.157.24 (Part I), ch III, s I, 17. The previous Conference, the first, took place in 1968 in Teheran. Related to this question, see C. Fernández de Casadevante and F. Jiménez García, *Terrorismo y Derechos Humanos. Una aproximación desde el Derecho Internacional*, Dykinson, Madrid, 2005.

³⁶ Before, between 1972 and 1991, this action was developed under the title "Measures to eliminate international terrorism" (see as an example resolution 46/51 of 9 December 1991 (A/RES/46/51)).

³⁷ See, as an example, resolution 49/1985, of 23 December 1984, entitled "Human rights and terrorism" (A/RES/49/185).

³⁸ See Resolution 58/174 adopted on the 22 December 2003. Also the final rapport of the Special Rapporteur K. Koufa for the Commission on Human Rights (Social and Economic Council) about "Terrorism and human rights" (UN, E/CN.4/Sub.2/2004/40, of 25 July 2004).

³⁹ See, as an example, resolutions 50/186, of 22 December 1995, entitled "Human rights and terrorism" (A/RES/50/186); 52/133, of 12 December 1997 (A/RES/52/133); 54/164, of 17 December 1999 (A/RES/54/164); 56/160, of 19 December 2001 (A/RES/56/160) and 58/174, of 22 December 2003 (A/RES/58/174).

⁴⁰ OJEC, L 164, of 22 June 2002.

this Council Framework Decision, Article 10 states that Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, “at least if the acts were committed on the territory of the Member State”⁴¹.

The Council of Europe has also taken into account victims of terrorism and, on 2 March 2005, the Committee of Ministers adopted the “Guidelines on the Protection of Victims of Terrorist Acts”⁴². These Guidelines are based on the principle that States “should ensure that any person who has suffered direct physical or psychological harm as a result of a terrorist act as well as, in certain circumstances, their close family, can benefit from the services and measures prescribed” by these Guidelines⁴³. These are, as we will see, measures and services which are granted independently of the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.

2. The concept of victim of terrorism

As stated before, a victim of terrorism is also, and at the same time, a victim of crime. Consequently, in absence of a definition of terrorism, all victims of intentional acts qualified as terrorist offences by International and National Law are “victims of terrorism”. But it should not be forgotten that such terrorist offences are also crimes under national law.

Nevertheless, in order to give real and effective protection to victims of terrorism, and in absence of a definition of terrorism, it is necessary that terrorist offences (as listed for example in Council Framework Decision (2002/475/JHA) of 13 June 2002, on combating terrorism, and on Council Framework Decision (2008/919/JAH) of 28 November 2008, which amended it), are deemed as crimes under national law.

On the other hand, as seen in the preceding pages of my exposé, the existing international norms contain all necessary elements in order to define what direct and indirect victims of terrorism are. It belongs to the responsibilities of States to act accordingly.

At the same time, the existing definitions of victim are based on three fundamental principles. Firstly, the principle according to which the quality of victim depends neither on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act nor on the familial relationship which may be existent between the author and the victim.

Secondly, existing definitions are based on the principle of non discrimination. According to this principle, the enjoyment of the rights linked to the quality of victim shall be secured without distinction of any kind based race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Finally, the principle according to which victims of terrorist acts should be treated in a manner which gives due consideration to their personal situation, their rights their dignity and their private and family life.

3. To the building of an international statute of victims of terrorism

⁴¹ Article 10.1.

⁴² *Council of Europe, Committee of Ministries-CM/Del/Dec(2005)917*.

⁴³ The concept of « victim of terrorism » chosen by these Guidelines is a broad one.

At present, the only international text which makes express reference to measures and services that should be granted to victims of terrorism is the Guidelines on the Protection of Victims of Terrorist Acts, adopted on 2 March 2005 by the Committee of Ministers of the Council of Europe. These guidelines present the merit of codifying, for the first time, most of the international norms concerning victims of terrorism. Obviously, due to its European origin, it only makes reference to norms adopted by the Council of Europe and the European Union. In this sense, it should be added that the 27 States Members of the European Union are also State Members of the Council of Europe.

When I speak about an international statute of victims of terrorism I refer to a statute built upon rights concerning victims of terrorism. This statute contains a list of rights which are based on international norms (of a general⁴⁴ and of a regional⁴⁵ character), as well as on international case law (of the European Court on Human Rights and of the Inter-American Court of Human Rights), and which have legal effects upon States. These are rights that at the same time constitute international obligations in the charge of States; obligations which derive from customary norms, international treaties as well as institutional norms.

Consequently, States have the obligation to make sure that these rights become “effectives” at the national level. That is, under national law. So, they are under the obligation to adopt all necessary and adequate measures in order to make it possible that such rights become “effectively” exercised by victims. Following the statement of the European Court on Human Rights, we are before rights which are not “theoretic” or “illusiv” but “concrete” and “effective” so that States have the obligation to assure their effectiveness and to make them possible.

The international statute of victims of terrorism, based upon the existent international norms, consists of the following rights:

- right to emergency and continuing assistance⁴⁶,

⁴⁴ Of a general character and in the framework of the United Nations, for example, the following treaties: the International Covenant of Civil and Political Rights and the Covenant of Economic, Social and Cultural Rights, both from the 16th December 1996; the International Convention on the Elimination of All Forms of Racial Discrimination, of 21 December 1965; the Convention on the Rights of the Child, of 20 November 1989; the Torture Convention of 10 December 1984; the Geneva Conventions of 12 August 1949 and its I Protocol of 1977; the Statute of the International Criminal Court; the International Convention against the Financing of Terrorism of the 9 December 1999; the Convention on the Rights of Persons with Disabilities of 13 December 2006; and the International Convention for the Protection of All Persons from Enforced Disappearances of 6 February 2007.

⁴⁵ At a regional level, in Europe, at the Council of Europe: the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950; the European Social Charter of 18 October 1965, revised in 1996, and its Protocol of 5 May 1988; the European Convention on the Prevention of Terrorism of 16 May 2005; the European Convention on the Compensation of Victims of Violent Crimes, of 24 November 1983; as well as several recommendations adopted by the Committee of Ministers of the Council of Europe. Inside the European Union, the Framework Decisions quoted in the precedent pages of this paper; the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims; and the Charter of Fundamental Rights of the European Union of 7 December 2000. In America: the American Convention on Human Rights of 1969; the Inter-American Convention to Prevent and Punish Torture of 1985. In Africa: the African Charter on Human and Peoples' Rights of 1981.

⁴⁶ Emergency assistance implies that “In order to cover the immediate needs of the victims, states should ensure that appropriate (medical, psychological, social and material) emergency assistance is available free of charge to victims of terrorist acts; they should also facilitate access to spiritual assistance for victims at their request”. On the other hand, continuing assistance signifies that States should provide for appropriate continuing medical, psychological, social and material assistance for victims of terrorist acts. If the victim does not normally reside on the territory of the state where the terrorist act occurred, that state should cooperate with the state of residence in ensuring that the victim receives such assistance.

- right to investigation and prosecution⁴⁷,
- right to effective access to the law and to justice⁴⁸,
- right to administration of justice⁴⁹,
- right to compensation⁵⁰,
- right to protection of the private and family life⁵¹,
- right to protection of the dignity and security⁵²,
- right to information for victims⁵³,
- right to a specific training for persons responsible for assisting victims of terrorist

⁴⁷ According to this right, where there have been victims of terrorist acts, states must launch an effective official investigation into those acts. In this framework, special attention must be paid to victims without it being necessary for them to have made a formal complaint. Finally, "in cases where, as a result of an investigation, it is decided not to take action to prosecute a suspected perpetrator of a terrorist act, states should allow victims to ask for this decision to be re-examined by a competent authority".

⁴⁸ According to it, States should provide effective access to the law and to justice for victims of terrorist acts by providing: the right of access to competent courts in order to bring a civil action in support of their rights, and legal aid in appropriate cases.

⁴⁹ According to it, States should, in accordance with their national legislation, strive to bring individuals suspected of terrorist acts to justice and obtain a decision from a competent tribunal within a reasonable time. They should also ensure that the position of victims of terrorist acts is adequately recognised in criminal proceedings.

⁵⁰ According to it, victims of terrorist acts should receive fair, appropriate and timely compensation for the damages which they suffered. When compensation is not available from other sources, in particular through the confiscation of the property of the perpetrators, organisers and sponsors of terrorist acts, the state on the territory of which the terrorist act happened must contribute to the compensation of victims for direct physical or psychological harm, irrespective of their nationality. At the same time compensation should be easily accessible to victims, irrespective of nationality. To this end, the state on the territory of which the terrorist act happened should introduce a mechanism allowing for a fair and appropriate compensation, after a simple procedure and within a reasonable time. On the other hand, States whose nationals were victims of a terrorist act on the territory of another state should also encourage administrative cooperation with the competent authorities of that state to facilitate access to compensation for their nationals. Finally, apart from the payment of pecuniary compensation, states are encouraged to consider, depending on the circumstances, taking other measures to mitigate the negative effects of the terrorist act suffered by the victims.

⁵¹ According to it, States should take appropriate steps to avoid as far as possible undermining respect for the private and family life of victims of terrorist acts, in particular when carrying out investigations or providing assistance after the terrorist act as well as within the framework of proceedings initiated by victims. At the same time, States should, where appropriate, in full compliance with the principle of freedom of expression, encourage the media and journalists to adopt self-regulatory measures in order to ensure the protection of the private and family life of victims of terrorist acts in the framework of their information activities. Finally, States must ensure that victims of terrorist acts have an effective remedy where they raise an arguable claim that their right to respect for their private and family life has been violated.

⁵² Which means that, at all stages of the proceedings, victims of terrorist acts should be treated in a manner which gives due consideration to their personal situation, their rights and their dignity. States must also ensure the protection and security of victims of terrorist acts and should take measures, where appropriate, to protect their identity, in particular where they intervene as witnesses.

⁵³ According to this right, States should give information, in an appropriate way, to victims of terrorist acts about the act of which they suffered, except where victims indicate that they do not wish to receive such information. For this purpose states should, on the one hand, set up appropriate information contact points for the victims, concerning in particular their rights, the existence of victim support bodies, and the possibility of obtaining assistance, practical and legal advice as well as redress or compensation. On the other, States should also ensure the provision to the victims of appropriate information in particular about the investigations, the final decision concerning prosecution, the date and place of the hearings and the conditions under which they may acquaint themselves with the decisions handed down.

acts⁵⁴,

- right to truth⁵⁵ and
- right to remembrance⁵⁶.

These rights exist but nothing restrains states from adopting more favourable services and measures than those just described.

This catalogue of rights which –with the addition of the rights to truth and to remembrance - coincides with that listed in the Guidelines on the Protection of Victims of Terrorist Acts, adopted on 2 March 2005 by the Committee of Ministers of the Council of Europe, should be open to other rights not envisaged on it. This is the case, in my opinion, of the “right to truth” and of the “right to remembrance” or “right to memory” I have added. They are both autonomous rights which are recognised by a plurality of international norms and by international case law on the matter which, at the same time, are closely related with other rights of victims. It is the case of the right not to be subjected to torture or to inhuman or degrading treatment or punishment, the right to a fair trial and, related with this last, the right to a prompt and impartial investigation as well as the right to be informed about the results of it. In connection with this question, and according to the European Court on Human Rights, as well as to the Inter-American Court on Human Rights, it should be added that the fact of a non effective investigation at the charge of state in order to determine the whereabouts and the fate of the persons in circumstances capable to put them at risk of their life constitute a violation of states’ obligation to protect the right to life.

⁵⁴ Which means that States should encourage specific training for persons responsible for assisting victims of terrorist acts, as well as granting the necessary resources to that effect.

⁵⁵ The right of victims to truth means that victims have right to a full and complete knowledge of the acts which caused their victimisation. They also have right to know the persons which took place in such acts as well as the specific circumstances that gave reason to them. Finally, the right to truth implies that victims of terrorism have also right to know the truth about the circumstances under which violations were committed and, in cases of death or disappearance, about the fate of the victim.

⁵⁶ Right to remembrance or right to memory. This right is inseparable from the personal dignity of victims, from the recognition of their legitimate rights and interests as well as from their right to truth. The right to remembrance is directed to the denunciation of the unlawful event of the victimisation. It is also directed to preserve the victims’ remembrance for present and future generations. In the framework of this right to, States shall adopt all measures in order to preserve victims’ remembrance as well as to hinder all action, independently of its nature, attempting to them or constituting an affront or a scorn to them. States shall promote all kind of acts in order to honour and to preserve victims’ remembrance for present and future generations.

Victims in Police Precincts. The social production of intimate professionals and intimate relational spaces

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INTRODUCTION

In this paper, I shall be discussing the goals of a very recent research project. As yet, I have no concrete conclusions to present. Nevertheless, I have some theoretical questions and methodological doubts to share. The project's name is Women in Police Precincts: Violent crime and gender relationships; and it will be financed by the Fundação para a Ciência e a Tecnologia [the Foundation for Science and Technology] (set up by the Ministry of Science and Technology) during 2010 and 2011. And, I must say, it is a clearly fundamental project. Although policy-making contributions are not the focus, the aim is to produce a creative "book of practices" (not only of "good practices") to reflect the relationship between the police and victims of gender violence in Portugal. In 2010, I will start working with the urban national police, the Polícia de Segurança Pública (Public Security Police) with the possibility of opening up the study to include other police forces, such as the Guarda Nacional Republicana (Republican National Guard), more specialised in policing the rural areas of the country, and the Polícia Judiciária (Judiciary Police), with the longest tradition of criminal and forensic investigation in Portugal.

The project's principal goal is to produce an anthropological characterisation of the situational encounters between policemen and women and victims, especially victimised women. I intend to reflect on the social production of what I call intimate professionals and intimate relational spaces that take place in police bureaucracies. As gender violence and victimisation is a socially and physically disrupting experience, I shall be considering the effects of such professional and personal encounters in police precincts; commonly the first stage of the domestic violence victim's institutional "career".

Features defining the victim's gender, social class, ethnicity, skin colour, professional status and residence are indelibly present in the situational responses to this type of crime in a street-level bureaucracy such as the police force. But the attendant's role is not taken for granted. What kind of difference does the professional being a man or a woman make? How important are the factors of special training, experience and know-how, or working with "intuition"? And what is the importance of the other central actor, the "present-absent" offender?

Power asymmetries are particularly central in police institutions, at various levels. Even when dealing with government policies, police forces, as street-level bureaucracies, may choose whether and how to implement the policies "in the field", as they say. Police officers have a certain amount of non negotiable power of their own (Bittner, 2003 [1970]). And there are many reasons for people, as citizens, often to choose not to deal with the police or even the judicial system or the state. In Portugal, a long period of dictatorship (1926-1974) made these relations relatively distant, even if there have been efforts to develop some techniques of proximity policing in the last ten years, and a wider debate about the problems of the judicial system as a whole. Nevertheless, in cases of domestic and gender violence, it is a suffering person, the "victim", that needs the state and police assistance. So, the ground level of victimisation and also of suffering, in this context, must be taken into account in the analysis. Besides bureaucratic and professional power, what makes the human relationship possible? I'm not thinking in human relations as the area of management or psychology studies. Instead, the idea is to understand the "minimum humanity" in such human problematic, violent, and care-demanding situations. At what occasions and in what conditions police officers as persons and professionals

see themselves as authority, supporters, persons with feelings, simply bureaucratic employees, risky professionals or, by the contrary, also victims or vulnerable and socially misunderstood?

Apparently, the law has been made less ambiguous with the public criminalisation of the act of domestic or gender violence; especially since the recent impact of new European and governmental policies. But when we look at the inter-personal relations, through the manifestations of social and individual vulnerability, what ambiguities are present? It is therefore important to study the openness and limits for feeling in police work, in police officers' professional and life experiences and the way the persons, as victims, present themselves. The objective is to explore and question the plane of possible professional emotions in context. Police officers are trained and socialised not to feel pity or sympathy for the victims, but there are exceptions. Certain kinds of emotions are valued and publicly acknowledged in defining police identities: anger towards criminals, courage to intervene in a dangerous situation, sometimes even being afraid to enter in what they consider problematic social or criminological spheres, etc. When looking at these cases of violence that imply victimisation, we come up against the production of professional gender, moral and ethical identities: ideas and practices concerning what police officers are and what they should be.

In a wider perspective, this project also aims to analyse the Portuguese institutional setting, understanding and arrangements, the politics and atmosphere of how women are attended in police precincts, from the perspective of gender violence related crimes and gender social relationships. It is vital to analyse the concepts in use for this type of crime. As such, the central methodology is based on the production of ethnographies in Portuguese urban precincts, albeit not exclusively. There will be a survey of policy-making and laws, resources, investments, distribution of services, organisation of spaces and the role played by police agents; in particular that played by women in the Police Force when dealing with such crimes. The project raises some questions: does the denunciation of crimes against women call for the dynamics of cultural change in a police organisation that is still predominantly masculine and seems to advocate a masculine ethos? Have there been changes facilitating the framing of police response to and understanding of this type of crime? Is there some relation between the greater presence and action of women in the Police Force and a growing institutional sensitivity concerning "gender crimes"? What degree of symbolic and material investment has there been for the resolution of problems that either concern the basic rights of women or presents them as common citizens in the eyes of the law?

It is, therefore, pertinent to find out what ideas of "person" are involved here, for both the police officer and the victim. Theoretically, crimes against women raise still wider problems, such as the debate between the positive vision of citizens' equality in access to justice and the negative vision of the "judicialization" of society, of family relations and the private life, that is, the State being seen as a "technology of power" (and also as a possible agent of "double victimisation"). Accordingly, it is fundamental to involve the police officers themselves in this argument since they are central actors in the contemporary processes of social and moral order, and in the production of ideas on gender, family, violence, crime, rights/equality.

METHODOLOGICAL GUIDELINES AND AN ETHNOGRAPHIC APPROACH

This will be an ethnographic ground base study conducted in precincts and, when authorised, within the private lives and houses of policemen and women, and victims. The initial phase will concern what could be called social careers, inspired by Ulf Hannerz's (1983) reflections on urban life.

Hannerz is interested in the explanation of fluidity as the main social characteristic of urban life, based on the organization of role repertoires and networks. "The key concept in our perspective toward fluidity in social life is career; not in the everyday sense of more or less rapid, more or less linear upward occupational change, which is only one kind, but to try a general definition, the sequential organization of life situations (...) the way the domains are made to fit together in a way of life through time" (Hannerz, 1983: 270). Here, anthropology

can make a positive contribution to the study of careers, a forgotten domain, as Barth once noted (1972, cit in Hannerz, 1983: 339).

My suggested addition here is that we must consider the emotional role in careers and in relational spaces that are created in the flux of fluid social careers, particularly in these kinds of police/victim encounters. In terms of how victimised women are attended in precincts, police officers have to face the issue of how to deal with suffering, at the same time as managing legal and bureaucratic forms. Their professional manner can have an impact on women's lives but the reverse is also true: the emotional situations can have an impact on their own lives and work practices.

I am very much aware of the limits of what is termed 'participant observation' in this kind of institutionally located study. But the methodological approach is deeply embedded in ethical concerns. It is not simply a matter of negotiation with informant consent. It is about the problem of setting the limits for the observation of human suffering and personal intimacy and, more widely, the intimate spheres of public lives.

This could be less problematic than it seems, since I am more interested in police officers reacting to victims than in the victims' experience itself. It is, nevertheless, a very problematic approach, because my research is about what lies in between, about the relationships produced in the encounters between police officers and victims.

I have already done 12 months of fieldwork with the Portuguese urban police (Durão, 2008), which involved me negotiating a very unusual research status. I was a kind of trainee with the possibility, like any police officer, of experiencing every kind of police situation outside and inside police precincts, along with the freedom to read all the written reports. But the truth is, my work was like a lens catching glimpses of police work, actions and biographies; not a social journey through the intimate worlds of work.

THE PORTUGUESE LEGAL CONTEXT FOR VICTIMS

This study is being carried out against a background of change in the official concept of domestic violence and the idea of "legal victim" in Portugal. Domestic violence has recently been codified as a public crime (Law 7/2000) and consequent judicial changes have occurred. This means that in terms of police action, there is no need for an accusation to bring all the legal, bureaucratic and professional procedures into action. Many political campaigns, parliamentary discussions and state policy changes have focussed on this issue over recent years. This national policy trend reflects the Framework Decision of the Council of the European Union to produce the first "hard law" for European member states regarding victims in criminal proceedings, on 15th March 2001 (2001/220/JHA). Hard laws mean, at least in theory, European conformity on real changes in national bureaucratic systems.

The APAV (Portuguese Association for Victim Support - a civic organization), the Comissão para a Cidadania e Igualdade de Género (Commission for Citizenship and Gender Equality - a governmental organization), among others, now have an important social and political role in these matters.

The paradigmatic change in national law on domestic violence has certainly had an impact on police work; a quantitative but also a qualitative effect on the street-level bureaucracy pact. For instance, the number of police reports jumped from 11,162 in 2000 to 21,907 in 2007. But of the 109,786 accusations made between 2000 and 2006, only 2,252 led to condemnations. Victim support and assistance NGOs have stated that, in 2008, almost 50 women were killed by their male partners or family/related persons. But at the same time that the police are maintaining social order, they are also the first professionals in the legal and political system to deal with the changing regimes in practice. At this point, we could say that the police force is a subject and object of orders. As such, they are professionals in process (Rue and Strauss, 1961).

THE PORTUGUESE SOCIAL CONTEXT AND POLICING

We can say that, until very recently, most people avoided filing accusations with the police in what are classified as domestic violence situations. It is only in recent years that the presence of this crime has grown statistically enormous. Nevertheless, in my previous fieldwork back in 2004, I verified that policemen explicitly preferred not to enter such a crime scene, saying that they couldn't resolve it; in contrast with all sorts of other demanding situations, such as drug control, for instance (Durão, 2008). They thought that interfering in male-female relationships was like entering domestic realms without being invited. They played with the famous popular saying: "Nobody should put the spoon between bride and groom", nowadays used as a regressive slogan in sensitising and changing practices' campaigns. The private sphere shouldn't be their concern and they frequently evoked the law's limitations (even having the discretionary powers public crime authorises).

It was particularly interesting to see how policemen also gave a subjective explanation. Some cited their own example to illustrate the limits of social order – their work domain. They frequently said they would not like to be in the situation of being intimately policed. It seemed to me, at that moment, that the intimate route of policing was as central to the understanding of this issue as the limits imposed by the so-called male ethos of the police force.

Other aspects of the limits of public/private life were frequently scrutinised, especially the work carried out by police officers in "proximity programmes". Very recently, the first public and academic debate dedicated to the emergence of "local contracts of security" was held (ISCPS, Lisbon, 7th July 2009). When a top-ranking police officer discussed the aims of police proximity, she pointed to the police entering private domains as a "critical factor". This problem was presented as if the techniques of proximity policing had never been brought up before. So, it seems that only now has it become an issue.

Now that there is governmental policy pressure on legitimising public forces entering private behavioural domains, have policemen and women's perceptions of these policing limits changed? Are there still explicit ambiguities between objective and subjective arguments regarding the control of domestic violence situations?

Aspects of a broader national context must be analysed. Firstly, policing is not a popular activity in Portugal. Historically, there is a gap between citizens and police officers. As I said earlier, the long dictatorship (1926-1974) did much to harm this relationship. Thirty five years of democracy seem to have done little to reverse the situation, with the slightest suggestion of private interference being fiercely criticised. Paradoxically, there are spheres the police enter that are not entirely public (like schools and retirement homes), which are not seen as problematic. The limit seems to be "home sweet home".

Secondly, police officers are part of a specifically "professional community". They have an age-old tradition. The majority of the people recruited to the two main police forces in Portugal (PSP and GNR) were not born nor live permanently in the urban centres where they work. During their careers, they spend years trying to understand urban culture; finding much of its behaviour alien and uncomfortable. I've noticed that, to some extent, they tend to reject an important part of a city's cosmopolitan experience: the diversity and multiplicity of lifestyles. It seems, sometimes, that many of them don't feel entirely able or motivated to deal with what they call, the domestic violence "games" of metropolitan couples. Many feel that instead of solving problems, they can cause more trouble.

Are changes in the legal apparatus and the reclassification of crime contexts, in this case, the legal scenario of domestic violence relationships, sufficient for bureaucratic transformations? And, more deeply, is this new policy sufficient to change police officer's subjective interpretation of such crimes, being this one of the most discretionary task of the judicial system?

EMOTIONS, THE STATE AND THE POLICE

Legal transformations have an impact on the delimitation of policing encounters, the delimitation of emotions and the production of what we could call new moral rationality and emotion; but we don't know to what extent. This process is precisely the focus of my study. In social sciences, we tend to see the state as a huge rational entity. This has its basis in Weber. The cultural construct of ideal bureaucracy was first designed by Weber (1958): a strict hierarchical system, governed by rules, characterised by specialisation and impersonality, and administered by officials in different roles, loyal to the system rather than people. To a certain extent, it may still exist today; but as an analytical model it has been questioned in recent years. "The idea of a coherent, unified rationality is neither coherent nor unified in itself" (Herzefeld, 1992: 2). Even in the case where bureaucrats are criticized for not understanding and not taking into account the individuals' everyday living situations, Albrow points out that "rigid, inflexible, cold behaviour is just as emotional as warm and loving responses" (1997: 120). This is a good starting point for the study of police responses and personal and subjective moralities vis à vis violence against women.

Herzefeld speaks about the social production of indifference. He says indifference is the rejection of common humanity. "It is the denial of identity, of selfhood. We may thus suspect that its appearance in state structures arises from competing claims over the right to construct the cultural and social self. Who "makes" the self – the citizen or the state? (Herzefeld, 1992: 1). When legal forms consider the human side of crimes as the "victims", and allow a certain expressed humanity at work, what is to be expected from the redefinition of such social forms of indifference?

In another book, Herzefeld develops the concept of "cultural intimacy" which can take us even further. "The state – actually a shifting complex of people and roles – must be viewed as an integral aspect of social life" (1997: 2-5). It is the idea of national harmony beyond the national state that is challenged here. There are important cultural engagements at the "top" and at the "bottom" that Herzefeld looks for.

"What is the common ground that ultimately dissolves the possibility of clearly defined, immutable levels of power? Here I want to argue for the centrality of cultural intimacy – the recognition of those aspects of a cultural identity that are considered a source of external embarrassment but that nevertheless provide insiders with their assurance of common sociality, the familiarity with the bases of power that may at one moment assure the disenfranchised a degree of creative irreverence and at the next moment reinforce the effectiveness of intimidation" (1997: 3).

On the one hand, the police force is the ideal area to study the social forms of irony and irreverence towards the state and the administrative system from state functionaries whose actions are, at the same time, a perfect reflection of the codification and values of the state. On the other hand, victims experience a dysfunctional social system, with only that system and its state mechanisms to deal with this dysfunctionality.

Within the police, intimacy is viewed as a source of embarrassment, if not a taboo. Nevertheless, it can be considered one of the foundational aspects of this kind of "body work". Bittner has given the classic definition of police work. He says the police role is defined by mechanisms of distribution of a non negotiable coercive force at the service of intuitive comprehension of situational exigencies (Bittner, 2003, 1970).

I would add to this understanding of police work the importance of "managed intimacy", which is formed here through the combination of two properties: the proximity of bodies and state legitimacy (to deal with this

proximity). Managed intimacy is one of the most important problems policemen and women have to deal with when they need to use morality, humanity, authority or most enforcement behaviour toward citizens.

Police officers are not essentially rational; they develop a rationality that is a product of the presence of “body intimacy” and “state intimacy”. On one hand, the intimacy comes with the job; it derives from the conditions of work from the body contact in policing acts and situations. On the other hand, there is an intimacy with legitimate state mechanisms (norms, laws, working papers, reports) that offer the professional a wide range of argumentative-contact and in it, a realm of possibilities to conduct the action, enquire, and write. Is there a consensus about what rational intervention in these “intimate contacts” with domestic violent crimes victims should be?

A very determinant emotional ambiguity can be look at when police forces call for themselves the victim status in some circumstances, particularly when they are publicly persuaded to present results, when their errors are known and diffused, or when substantial changes take course (with the inclusion of proximity policing techniques, for example). Often police officers can present themselves as vulnerable as victims when the call for public attention on how they are badly treated by “criminals” or by “the society”. There is a certain dramaturgy in this presentation, with statistic legitimacy involved. In such cases, they ask for an authority protection and attention from the state, such as victims ask for police authority...

It is possible that in many cases, when the problem of domestic violence takes the victim for the first time to call for the police assistance, a “learning privacy” project takes place, some techniques for hiding emotions and maintaining integrity can be experienced. Differently, when the victims call systematically for the police officers help, different relationship take place.

Ethnography can help to achieve the intimate level of state professional practices and public discourses. An important part of the social order is made of these encounters between police, criminals and victims, but also the public ideas about the national police that are at stake. We may ask what “intimate” means in law enforcement and peace keeping police work, especially looking at the moments in which they can show or strategically hide some sort of humanity.

FINAL REMARKS

What is intimacy when personal, professional and institutional settings are involved? Policing is a profession where the most objective regulations and norms are in play. At the same time, the intimate person that constitutes the policeman or woman is not just always present; it is a fundamental part of the job. Besides, in certain conditions police officers have to deal with the most diverse and socially stratified of “intimate worlds”. What differs when they attend poor or medium class women? In many situations, police officers have to decide with their minds and hearts – “in the heat of the beat”, as they say. But what goes on in their hearts and minds? Their moral mandate and who they personally are is always at the front, especially in traumatic situations that imply victimisation. But they are also a “product” of legal and political apparatus, the professional landscape with professional and human relationships at stake; they operate in the name of the state and with intimate state mechanisms. The ways these settings are transformed have an impact on their professional selves. The self is not entirely alone. The police officer is a citizen and, at the same time, a state professional. Instead of only asking who makes the self – the state or the citizen, as Herzfeld puts it (1992: 1) - we can also ask in what circumstances is the self made?

That’s why the focus of this study is the encounter between police and victims. The social and relational immaterial and material environment functions as an important part of the study. Even objects and material buildings have an agency during the process (Latour, 2005).

As emotions are not natural (Lutz, 1988), rational bureaucracies are not neutral. Hochschild speaks about an “emotional labour”. “This labour requires one to induce or suppress feeling in order to sustain the outward countenance that produces the proper state of mind in others. (...) This kind of labour calls for the coordination of mind and feeling, and it sometimes draws on a source of self that we honour as deep and integral to our individuality” (2007: 85).

But the professional area which Hochschild has worked on, airline attendance, reveals a pretty closed context of interpersonal interaction. In police work, we could say there is a complex and very open context of interaction. Besides, the situational diversity cannot display a particular and unique state of mind in others about policing or police professionals themselves. The same person must develop a very differentiated and varied repertoire of emotional labour. That’s the difficulty and, at the same time, the creative challenge of being a police officer. It is this repertoire that we must analyse.

I intend to develop this notion of intimate professionals as a constitutive part of police work and, more widely, as a part of social experience in the work domain. Hochschild states: “The emotional style of offering a service is part of the service itself” (2007: 84). I would say, using the example of policing, that the emotional style of sharing a service is part of the service itself. Sometimes the difficulty for policemen and women is the emotional distance the professional must engage with in order to honour rationality.

At this point, believing that policing has many emotional aspects that are in play, socially producing intimate professionals and intimate relational spaces; we can raise some empirical questions. What is the subjective relationship space that opens up (or that closes down) for sharing human experiences of victimisation in the context of police precincts? In other words, the idea is to study the level of openness, or otherwise, to the process of victimisation in these professional environments. How much space do police officers allow the victim’s words and gestures? I believe that police work with victimised women goes through a particular process of human identification vs. estrangement, and this must be documented. As Pina Cabral points out, when we look at the problem of person/individual constituency, otherness has two angles: communicational otherness – the other that evokes identity in a parallel disposition -- and previous otherness, the germ from which identity emerges (Pina Cabral, 2005). Without a minimum of identification, there can be no contact between the victim and the police; but identification cannot blind the bureaucratic and professional work. Professionals and victims must develop situational emotional skills to transform subjective feelings and work into some sort of objectivity and, in turn, objective laws and policies must respond to situational and highly emotionally-dependent interactions and inter-personal contextual encounters.

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State of the art of the conceptualization of adolescents as victims of crime

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„Most of recent public concern about youth and crime has focused on youth as perpetrators. But public and policy awareness has devoted much less attention to another key fact about youth: that is also a time of heightened vulnerability for crime victimization“

(Hashima & Finkelhor, 1999, p. 799)

Introduction

Despite the fact that today the victim has increasingly become a key player in the crime debate, some important areas for concern and redress remain (Davies et al., 2003). The observation that adolescents are far more often seen as potential offenders rather than as victims, is one of these. The link between adolescents and offending is far more easily made than the link between adolescents and victimization. Besides what is spoken or written about minor victims is foremost about victimization by (sexual) abuse and neglect (Morgan & Zedner, 1992; Finkelhor & Dziuba-Leatherman, 1994a & 1994b; Finkelhor, 1995b & 1997; Brown, 2005; Francis, 2007).

In this contribution we want to take a look at the specific category of young, adolescent victims of crime who are often placed in the shadow, despite their relatively great risk of becoming victim of different forms of crimes. After a rough sketch of the contrast between the fact that minors are scarcely recognized as victims and the empirical findings of previous research that adolescents do become victims of crime, we want to search for possible explanations for this misunderstanding on the basis of current theories and falling back on Christie's theory of the „ideal victim“ (1986). Following Finkelhor (1995a) we want to ask aloud the question from where these misconception come and especially, why they live on. We want to seek theoretical explanations that can answer these question as it is important to analyze why some forms of suffering don't get the status of victimhood and others do (Boutellier, 1993). Finally, we want to devote ourselves to attention for adolescent victims in (criminological) research as there is not only a lack of attention for minor and adolescent victims of crime among the public, but also a gap in scientific research. Different forms of research about victimization by different types of crime can contribute to the knowledge and better understanding of adolescent victims, their experiences and needs and may rectify the one-sided perception of adolescents as potential offenders.

1. Gap between victimization risk of adolescents and dominant (adult) perception of adolescents as (potential) deviants

„Unfortunately the issue of seriousness of crimes against children is not just a matter of evidence“

(Finkelhor, 1995a, p. 9)

Not all segments of the population share the same risk of becoming a victim. Like Genn states: „Becoming a victim of crime is a misfortune which is suffered unevenly in society“ (Genn, 1988, p. 90). The risk of becoming a victim differs according to background characteristics such as gender, ethnic background, status and age (Hindelang et al., 1978; Garofalo, Siegel & Laub, 1987; Davies et al., 2003; van Noije & Wittebrood, 2007; Walklate, 2007). Next to the empirical observation that some groups become more victimized than others,

one can also observe that not all groups of victims get the same attention: „It is as though the victim status has to be „earned“ in some way, with some people who suffer crime being more worthy of attention than others“ (Morgan, 1988, p. 74). Not all persons who become victimized are also socially recognized in that way (Winter, 2002; Strobl, 2004). Just as the fact that someone commits a crime does not necessarily mean that he or she will also be seen as an offender, the objective fact that someone is a victim of crime, does not automatically mean that this person will also be publically recognized as a victim: „the degree to which an act will be treated as deviant depends also on who commits the act and who feels he has been harmed by it“ (Becker, 1963, p. 12). Just as rules do not apply for all persons in an equal manner, not everyone is given the status of victim to the same degree. In the same way that Becker (1963, p. 20) speaks about „secret deviance“, one can also speak about „secret victimhood“: forms of victimization by a crime that are not recognized as such and in consequence do not get treated as or responded to as such. Next to the offender, also the victim is a social construction (Quinney, 1972; Miers, 1989). Lemert states that „in order for deviation to provoke a community reaction, it must have a minimum degree of visibility, that is, it must be apparent to others and be identified as deviation. (...) While many forms of criminal deviation remain concealed in our society because of the intrinsic qualities of the behavior involved, because of the nature of the situation, or because of the physical and social characteristics of the persons involved“ (Lemert & Winter, 2000, p. 30). This does not only count for offending, but also for victimization. So it is important to distinguish between the formal identification of a victim suffering from a norm violation and his or her social recognition as a victim. The stereotypical victim role is that of the vulnerable, powerless and suffering person (van Dijk, 2006 & 2008)². Persons who give the impression of being shy, weak, needy and vulnerable have better chances of being considered as victims than persons who seem aggressive and strong. Victims who belong to a non-accepted out-group tend to be seen as offenders rather than as victims (Strobl, 2004). Furthermore, a fearful and passive victim in need of help is a more convenient person for support agencies (Ditton et al., 1999).

2 However there are victims who distance themselves from these stereotypical images. They find a new strength and present themselves as strong persons in control of their lives. For some examples see van Dijk, 2006 & 2008.

3 There may be other social groups as well who are not considered as (ideal) victims in spite of their relative high risk of becoming victimized. We think for example of victims of ethnic minorities.

The gap between the empirical chance of becoming a victim of crime and the perception of the public of the risk of becoming victimized, can be illustrated by victimization among adolescents³. We know from previous research that minors have in general more chance of becoming victimized. So not only is there an unequal distribution by age of offending but also an unequal distribution by age of becoming a victim of crime. We can even speak of an over-representation of young people among victims (Wittebrood, 2006; Walklate, 2007). The risk of becoming victimized would decrease with age (Catalano, 2005; Davies et al., 2007).

There is a kind of scientific consensus, especially based on results of self-report studies, that delinquency is higher in adolescence than in other periods of childhood (e.g. Hirschi & Gottfredson, 1983; Greenberg, 1985; Steffensmeier et al., 1989; D'Unger et al., 2002)⁴. There is not however the same information nor consensus about the pattern of victimization in childhood (Finkelhor et al., 2009). It could be argued (from a routine-activity perspective) that more delinquency among adolescents would be associated with an increased victimization among adolescents since the targets of adolescent offenders may be foremost adolescents as well⁵. Indeed, research has shown that adolescents do not only commit more facts, but are also more often victimized or more repeatedly than adults (Aye Moun, 1995; Hartless et al., 1995; Smith et al., 2001; MORI, 2004; Wood, 2005; Armstrong et al, 2005; Deakin, 2006; Burssens, 2007). However there is no consensus about which specific age group among adolescents becomes victimized the most. Aye Maung (1995) states that victimization by harassment and assault is primarily school-related and occurs foremost in the group of 12-13 year-olds; the age group of 14-15 year-olds has more risk of becoming victim of incidents on the

streets. From a table shown in the article of Finkelhor & Ormrod (2000), we can derive that there is a general increase of victimhood from the age of 10-11 on and an exponential increase from the age of 15 onwards. The MORI Youth Survey (2004) concludes that young people of 11 to 13 years are victimized the most whereas Catalano (2005) states that the group of 12-15 is victimized the most and Deakin (2006) speaks of a peak of victimization by harassment and assault at 12-13 years and of a peak at 14-16 years for victimization by theft.

4 The prevalence of offending from self-reports is always higher than the numbers of the official police statistics because of the dark number. Self report studies are foremost among young people. So we must ask whether the high prevalence of offending among young people is partly the result of a methodological bias.

5 Finkelhor et al. (2009) found for example that 91 % of all assaults against juvenile victims were perpetrated by other juveniles. However, the smaller size of younger children, their inexperience and greater dependency on others may also suggest a relative high victimization among younger children (Finkelhor et al., 2009).

Interesting here is the research of Finkelhor et al. (2005 & 2009) in which the researchers look at the victimization patterns of different forms of possible victimizations across different age categories. In general, they found an increase of victimization as children's age increases with an overall higher victimization rate for 14-17 year-olds compared to 10-13 year-olds. Prevalence of any physical assault is higher among 6-12 year-olds than among 2-5 and 13-17 year-olds. The pattern varied however according to specific types of victimization but specific victimizations such as victimization by assault with injury, attempted assault, perpetrator assault and assault by peers are higher among 13-17 year-olds. According to this research, property crimes victimization is higher for the group of 13-17 year-olds than for 2-5 and 6-12 year-olds. It is mainly victimization by theft without the owner being aware. The prevalence of vandalism and robbery victimization is lower in this age group than in the other age categories (Finkelhor, Ormrod et al., 2005). Victimization by assaults by siblings did for example decline after the age of nine (both for boys and girls) whereas victimization by assaults by peers increased among boys after the age of nine. The level of property crime victimization among boys remained constant during childhood; for girls the property crime victimization rate increased among the 14-17 age group and the rate of victimization in the 6-9 and 10-13 age group was lower than among boys (Finkelhor et al., 2009).

In this contribution we want to focus especially on the observation that, in spite of their relatively high chance of becoming a victim of crime, adolescents are not always perceived as such and consequently do not always get the attention and help they have a right to because of their victimhood. Young persons are often seen as (possible) offenders and much less as victims: „when the words „crime“ and „youth“ are paired together, the ensuing picture in most people's minds is that of the young person as offender. (...) In contrast, the words „youth“ and „victimization“ are rarely co-joined“ (Francis, 2007, pp. 203-204). In contrast to children who are often regarded as innocent and dependent, adolescents are often seen and presented by adults as dangerous, deviant and potential offenders. The problem of crime is often seen as the problem of youth (Morgan & Zedner, 1992; Davies et al., 2003; Muncie, 2003 & 2004; Brown, 2005; Francis, 2007; Burke, 2008); „Crime is perceived to be an age war, with young offenders preying on innocent elderly victim“ (Mawby, 1988a, p. 101). Muncie et al. (2002) speak of young offenders as „folk devils“. There is a „continually warning of a delinquent syndrome in which youth delights in crudity, cruelty, violence and unruliness“ (Muncie, 2003, p. 46); Brown speaks about „demonization of ever younger age groups“ (Brown, 2005, p. 213)6.

6 Petersen et al. (1991) state that the negative views of adolescents not only reflect current beliefs but may also have negative consequences concerning the self-perception and behaviors of adolescents.

7 A perception in which the media also play a part. Concerning street crime for example the media promote the view of the young persons as offenders and weaken their daily victim experiences (Leishman & Mason, 2003; Greer, 2007; Reiner, 2007).

8 Based on a large-scale research concerning experiences with crime, nuisance, police and social control, Innes (2005) found that both adults and young people perceive (other) groups of young people as a risk for the own safety. However, in reality adults incur mainly material damage, whereas young people really suffer threatening and violence by other young people. This observation suggests that crime among young people could be above all an intergenerational problem, with offender and victim being of the same age category.

Besides the observation that there is less attention for victimization among adolescents than there is for offending and that adolescents are far more often perceived as (potential) offenders than as possible victims⁷, one can ask if the idea of the youngster as „dangerous and deviant“ is in some cases not already a form of „perception-fight“ between young people and adults. When we look at the problem of young people in public spaces for example, we can conclude that young people may perceive „hanging around“ in a different way than adults do. Young people may see the public space as a meeting place where it is pleasant and safe to stay. Whereas adults often perceive young people as individuals who did not internalize the norms of society and who are unpredictable. Because of this unpredictability adults perceive young loiterers as a problem and risk for the own safety (Innes, 2005; Ponsaers, 2007)⁸. However, adolescents are seeking for their own identity; they want to give a meaning to their lives in a creative way. Action, kicks and pushing back the own boundaries are an important part of this. Hanging around can be seen as part of the struggle for independence from their parents (D'haese, 2008).

1. Forms of victimization of minors

In this chapter, we want to give an idea of the different forms of victimization that may confront the whole group of minors. We explore how these victimizations can be categorized and which forms of victimization get the most attention, both from the public and the scientific world. Afterwards we shall look for possible reasons for the misjudgment of victimization among young adolescents.

Minors can suffer all forms of victimization to which adults are subjected as well as some victimizations to which they are vulnerable due to their specific status. Finkelhor (1995b & 2007) speaks about types of victimization that violate both children's dependency needs and the social expectation that adults will respect these needs. He draws a continuum according to the degree to which victimizations are related to children's dependency status. At the one extreme there are dependency-specific forms of victimization which have practically no application other than in the case of a dependent child as for example physical neglect and family abduction. At the other end of the continuum there are victimizations without reference to dependency that can occur in the same way against both children and adults as for example stranger abduction and homicide. In between these extremes Finkelhor (1995b & 2007) places forms of victimization that involve dependency in some context but not in all as for example sexual abuse⁹.

9 Finkelhor (1995b) states furthermore that types of victimization that violate children's dependency are more common among the youngest – the most dependent – children. According to Finkelhor, the victimization profile of minors becomes more like that of adults as they get older.

There are also other categorizations in the literature. Morgan (1988) divides the criminal acts of which children may become a victim into two types: on the one hand physical and sexual abuse of children by relatives and acquaintances, and on the other hand different offences committed by outsiders.

Finkelhor & Dziuba-Leatherman (1994b) make another categorization. They distinguish three categories of victimization among minors: firstly pandemic victimizations which occur to a majority of children in the course of growing up such as assault by siblings, physical punishment by parents and theft, peer assault, vandalism and robbery. Secondly acute victimizations which are less frequent than pandemic victimizations but may be more severe such as, physical neglect and family abduction. Finally there are the extraordinary victimizations

that occur to a very small number of children but that attract a great deal of attention, such as homicide, child abuse homicide and nonfamily abduction.

Finkelhor & Hashima (2001) state in their turn that the victimization of children in justice can be divided into three categories. Firstly, conventional crimes in which children are victims as for example rape, robbery and assault. Secondly, child maltreatment that violates child welfare statutes like abuse, neglect and child labor. And thirdly, „noncrimes“: „acts that would clearly be crimes if committed by adults against adults, but by convention are not generally of concern to the criminal justice system when they occur among or against children“ (Finkelhor & Hashima, 2001, p. 50). This last category includes crimes like sibling violence and assaults between peers.

Notwithstanding the existence among minors of these different forms of victimization, the attention for victimization among minors is strongly fragmented. Where minors are mentioned as victims the focus is often on specific forms of victimization which are limited to victimizations related to the dependency status (Finkelhor, 1995b & 2007). The first type of Morgan (1988), the „extraordinary“ and „acute“ victimizations of Finkelhor & Dziuba-Leatherman (1994b) and the child maltreatment of Finkelhor & Hashima (2001): victims of private violence within the family or of psychotic or sexual violence and abuse.

Besides this, attention is often centralized around the concept of „PTSD“ (post traumatic stress disorder) and fits within the health care where young people are considered as innocent victims of abuse and pain rather than as victims of crime (Morgan & Zedner, 1992; Finkelhor & Dziuba-Leatherman, 1994a & 1994b; Finkelhor, 1995b & 1997; Brown, 2005; Francis, 2007).

Because of the focus in literature and studies on only a few forms of victimizations that young people experience (such as physical and sexual abuse among children) the larger spectrum of victimizations that young people experience is not seen (Morgan & Zedner, 1992; Finkelhor, Ormrod et al. 2005). As a result there is too little attention for other forms of victimization among minors. Morgan (1988, p. 74) states that „although child abuse within the family is being treated much more seriously than in the past, other forms of victimization of children, by contrast, have both a low public profile and, seemingly, a low priority among statutory and voluntary agencies“. Finkelhor (1995b, p. 183) speaks of „a lopsided literature“ as a great deal has been written about the impact on minors of crimes as sexual abuse and neglect against comparatively little about the extent of victimization by other crimes as for example violence and theft and about the consequences of and coping with victimhood. A second result is that there is less attention for other groups of victimized minors such as adolescent victims.

2. Seeking for explanations for the misjudgment of adolescent victims

„It is ironic that the problem of children as aggressors has until recently had more attention in social sciences than children as victims, reflecting perhaps priorities of the adult world“

(Finkelhor, 1997, p. 104)

2.1. Theories for explaining marginalizing victims in general

2.1.1. Denying and trivializing victimization as a technique for neutralizing conscience problems

Theories described by Cuyvers (1986) and Miers (1990) in the matter of the marginalization and labeling of victims in general, can also apply to the subgroup of young or adolescent victims. First of all, by analogy with the theory of Sykes & Matza (1957) on the ways in which offenders put aside their values and norms to commit a crime without being in conflict with themselves, people may also use neutralization techniques to dissociate themselves from a victim without problems of conscience, for example by denying the damage and harm or denying the victim (Cuyvers, 1986). Applied to young victims, one could argue that crime among young people is often trivialized and not seen as real crime: „Particularly in regard to victimizations like youth-on-youth assault, robbery and theft, the dominant image is of relatively trivial kinds of episodes. There is a whole set of terminology used to describe violence among youth that tends to minimize its seriousness, words like scuffles, school-yard fighting, bullying, and horseplay. This language erects a large connotational divide between violence going on among children and what is thought of as a real “crime”. Hidden in this language appears to some assumptions and stereotypes about violence in the lives of young people” (Finkelhor, 1995a, pp. 9-10).

Physical violence among minors is often seen as „a manifestation of normal youthful aggressive behavior” (Greenbaum, 1988, p. 11), „schoolyard fighting and the like” (Hashima & Finkelhor, 1999, p. 817) and being part of „the rough and tumble of childhood” (Morgan & Zedner, 1992, p. 51). Only the most serious cases are seen as crimes so victims of these sorts of violence are consequently not always recognized as victims: „Routine acts of minor violence committed against children, whether by other children or by adult family members, remain resistant to being defined as criminal acts” (Morgan, 1988, p.81)¹⁰. Violence between

¹⁰ Also in the scientific world, violence among minors is not always considered as something serious; Garofalo, Siegel & Laub (1987) state that „Scuffles, threats, and arguments can end up being designated as assaults. A student who is coerced into surrendering the Twinkies in his/her lunchbox to a school bully is, by strict definition, a victim of robbery. These events, although unpleasant and perhaps frightening, are not as alarming as suggested by the labels “assault” and “robbery”” (Garofalo, Siegel & Laub, 1987, p. 331).

¹¹ By determining if something that a young person experiences has to be considered as a crime, the question arises if there are no other selection criteria than by determining the nature of similar facts against adults. Is victimization by crime among young people to be regarded as a „problem” or as a crime? Maybe the fact that in Belgium minors cannot commit crimes but only „facts described as crimes” and that minors are consequently not seen as offenders, is also extended to victimization? Can young people then also not become „a victim of crime”? Can the fact that adults do not always consider adolescents as victims of crime but as parties of a problem instead not partly be explained by the fact that adolescents of 14-16 years old themselves also judge incidents in the light of the specific relation with that person and do not always think in terms of societal norms and rules (Kohlberg, 1981 & 1984)?

¹² It is through education among other things that young people learn not only to stick to the rules and to reject the right of the strongest but for example also learn to recognize the harm caused to others (Boutellier, 1993). D’haese (2008) states that adolescents have a strong enough bond with society and its rules from 17-18 years on.

¹³ Finkelhor (1995a) speaks about the experiencing of malicious intent or callous disregard on the part of others and the compromised sense of security for oneself or one’s possessions.

young people at school is often seen as less serious than similar violence between adults. Finkelhor & Hashima (2001, p. 70) speak about „a class of violent acts and victimizations (...) that tend to be frankly noncriminal when they involve child actors”.¹¹ Some people hold the opinion that being victimized can be character building for children and can teach them to defend and stand up for themselves (Finkelhor, 1995a). This however does not mean that young victims of violence suffer less serious consequences. Considering victimization by incidents such as peer assaults as victimization may on the one hand be seen as a watering down of the concepts „victim” and „crime” as adolescents experiment, test the (legal) boundaries and do not always have a sufficient bond with society and its rules (Williams, 1982; D’haese, 2008).¹² But on the other hand, one can question why being beaten up by a peer would be less traumatic for a minor than for an adult. As if the victim’s young age would remove the pain... (Greenbaum, 1988; Finkelhor & Dziuba-Leatherman, 1994a & 1994b; Finkelhor, 1997; Hashima & Finkelhor, 1999; Finkelhor & Hashima, 2001; Finkelhor, Ormrod et al., 2005; Finkelhor, 2007).

About property crimes, the idea exists that theft and robberies involving children are less serious because the objects taken are not very valuable. But as children do not have adult financial resources, needs and values, they may view their possessions in a very different way. Relatively inexpensive material objects may have tremendous importance: „A pair of sneakers may be as valuable as a pearl necklace. A bicycle, a child’s only mode of independent transportation, may be as valuable as an automobile” (Finkelhor, 1995a, p.13). Moreover, in terms of psychological impact, the impact of these victimizations may be very serious even though the monetary value of the object is small (Finkelhor, 1995a; Morgan & Zedner, 1992; Skogan et al., 1990)¹³.

Minimizing the seriousness of victimhood of crime among young people prevents the problem being recognized (Hashima & Finkelhor, 1999). Getting hit or having something stolen may be seen as just a part of being a youngster and therefore as something that is quickly overcome. Grievance about being beaten up or having something stolen months or years after the incident may be regarded as out of proportion because the facts are not seen as crimes or serious victimizations. This is in contrast with the acceptance of the same reactions where adult victims are concerned (Finkelhor, 1995a, Finkelhor, Ormrod et al., 2005). There is however, no evidence that children and youngsters are less sensitive to the impact of such incidents nor that they suffer less. On the contrary, such incidents might be expected to have an even greater impact as minors have much less control over their environment and their exposure to assailants, because of their dependency on others. They have less choice than adults have over their environment and over whom they associate with (Finkelhor, 1995a; Hashima & Finkelhor, 1999).

2.1.2. Reducing cognitive dissonance and the threat to the belief in a just world

Another explanation for the marginalization of (young) victims can be found in the theory of cognitive dissonance (Festinger, 1957). When different beliefs or opinions are not consistent with each other, we speak of „cognitive dissonance”. Applied to adolescent victims, this means that there may be a dissonance between on the one hand the idea of victims as innocent, pure and weak and on the other hand the conclusion that adolescents, foremost perceived as deviant and troublemaking, may also become victims of crime. The existence of this inconsistency or dissonance may lead to a psychologically uncomfortable state, which one wants to reduce. Reduction of this uncomfortable dissonance may be achieved by adding new cognitive elements (Festinger, 1957). For example the idea that young adolescent victims are not totally innocent but have contributed in some way to their victimization. As they are often involved in delinquency, they are consequently not „pure” and „innocent” victims.

In connection with this, we can mention the “Just-world-theory” by Lerner (1980). Confrontation with the suffering of victims may threaten the belief in a just and ordered world in which people get what they deserve

and deserve what they get. This may lead to a form of cognitive dissonance between the idea of a just world and the fact that innocent people may be victimized (undeserved). Dissociating psychologically from victims, devaluating them, holding them responsible and blaming them for their victim situation, can be explained by the need to reduce the dissonance and restore the belief in justice (Lerner, 1980; Hafer, 2000). As victims of crime may confront us with our own vulnerability, it is more reassuring to believe that such things only happen to people who have only themselves to blame, thus showing victims in a bad light (Van Dijk, 2008). Believing the opposite – that victims of crime are innocent – is after all admitting that we ourselves are vulnerable to the whims of fate. To protect themselves against this, people turn against those who have less luck and whom they can't help (Brehm et al., 1999). Furthermore, the so called „innocent victims“ would pose a greater threat to the belief in a just world than the „not innocent victims“ (Correia, Vala & Aguiar, 2007)¹⁴.

¹⁴ Others state however that the contemporary fascination with „ideal victims“ operates just as a way of establishing order over an insecure and unstable world (Spalek, 2006).

2.1.3. Equity theory

A third possible explanation for the devaluation of the adolescent victim can be found in the equity theory (Piliavin, Rodin & Piliavin, 1969; Walster & Piliavin, 1972; Walster, Berscheid & Walster, 1973). This theory states that people try to get as much profit as possible out of their behavior and that a tension develops when there is an inequitable situation. Victimization may lead to such a state of tension: „a victimising experience can cause a great deal of distress not only to the people directly involved, but also to the wider audience who become aware of the terrible event, as this brings into the open the vulnerability of human beings and the disorder that can engulf their lives“ (Spalek, 2006, p. 25). This tension may be reduced by restoring the actual equity by intervention or – when no intervention is possible – by restoring the psychological equity by manipulating the own observations, devaluating the victim and minimizing his or her suffering (Piliavin, Rodin & Piliavin, 1969; Walster & Piliavin, 1972; Walster, Berscheid & Walster, 1973). This theory can also be applied to victimization among young people. Adults may for example feel powerless and inadequate to stop peer violence. Should the incidence of peer violence be deemed more serious and effectively seen as „crime“, adults might have to invest more time and energy in preventing and resolving the problem and besides might feel disappointed when they failed (Finkelhor, 1995a). As such, it is much easier to minimize and trivialize the incidents.

2.1.4. Attribution theory

Finally, the attribution theory may offer an explanation for the marginalizing of young victims. This theory is based on the idea that people always look for causes to explain the behavior of others (and of themselves). In this way they try to place these events in a meaningful whole (Heider, 1958). This is one of the most important questions in the aftermath of victimization as victims want to understand their victimization and are therefore often looking for answers to the question why this happened to them. But also the audience, the public, want to give the victimization a place.

Events may be attributed to the motivation or the personality of the person him- or herself (dispositional or internal attribution), or to external factors such as the situation, other persons or chance (situational or external attribution) (Heider, 1958; Van Winkel, 1982; Brehm et al., 1999). When people do not have access to sufficient information, they attribute causes of events to the behavior of others. For victims this means that they are held responsible and looked down on because of what happened to them¹⁵. This is even more so for people who are not part of the own group and are socially distanced as social distance may contribute to the fact that people think that others get what they deserve. This is the fundamental attribution error: the tendency to contribute successes to personal factors and contribute failures to external factors for members

of the own group and doing the opposite for members of other social groups (attribute success to external factors and failure to personal factors) (cf. Pettigrew, 1979; Johnson et al., 2002). This may explain the misjudgment specifically of young victims because attributions are often made by adults who are not part of the group of „youngsters“ and consequently attribute the victimization-event to the behavior of the adolescents (internal attribution).

15 This is a kind of secondary victimization as the victim is wrongly held responsible for his or her victimization.

2.2. Adolescent victims no ideal victims

The term „ideal victim“ was first used by Nils Christie and defined as „a person or a category of individuals who – when hit by crime – most readily are given the complete and legitimate status of being a victim“ (Christie, 1986, p. 18). It is about a public status. A typical example of what Christie considers as being an ideal victim is the good, old woman who returns from her sick sister and whose bag is stolen on her way home, in broad daylight. Nevertheless, ideal victims are in reality not the majority of victims. The real victims may be even seen as the negation of those who are mostly presented as victim (Christie, 1986).

Fitting the picture of the ideal victim is not only determined by social class, gender or ethnicity but also by age. When we unravel the term „ideal victim“ further and apply it to adolescents, we can conclude that adolescent victims are least likely to be considered ideal victims. This is mainly because the ideal victim, according to Christie, is weak in comparison to the not related offender. Fattah (1992) speaks in this scope about „dichotomizing the victim/offender populations into good and evil, innocent and guilty, lambs and wolves, predators and prey, Abels and Cains“ (p. 7). This is connected with the mutual dependency of the perceptions of „ideal victims“ and „ideal offenders“: „offenders that merge with the victims make for bad offenders, just as victims that merge with offenders make for bad victims“ (Christie, 1986, p. 25). Boutellier (1993, p. 30) speaks about the intuitive connotation of crime and van Dijk talks of the silent code of passive victimhood (Van Dijk, 2008, p. 33). The victim has to be presented as being pitiable, needy and innocent in order that the guilt of the offender would be bigger and would correspond to the public stereotypes, just as the offender has to be presented guilty and evil in order that the victim would correspond to the stereotype of being innocent and weak (Cuyvers, 1986)¹⁶. Whereas young children are seen as weak and needy, this is far less the case with adolescents.

16 Van Dijk (2008) states furthermore that the active, strong-willed victims do not fit the existing, stereotypical picture of the victim and so risk becoming the target of aggression.

17 This strong correlation can be explained by a specific lifestyle, characterized by offending, and so increasing the risk of becoming victim (Jensen & Brownfield, 1986; Sampson & Lauritsen, 1990; Wittebrood & Nieuwbeerta, 1999). Young victims may merge with offenders and visit the same places and so increase their risk of becoming a victim. Conversely, young offenders often share the company of other offenders who may turn against them.

18 The media also play a role in this as their portrayal of victims and offenders is in harmony with the popular perceptions. When there are interchangeable roles where good and evil become mixed, the message may be unclear (Fattah, 1992; McShane & Williams, 1992).

Furthermore, there is not always a strict dichotomy between the (adolescent) offender and the (adolescent) victim. In general, it is not always clear who has to be considered as offender and who as victim (or bystander) (Boutellier, 1993). Specifically for adolescents, research shows that victimization among adolescents is strongly correlated to offending (Aye Maung, 1995; Smith et al., 2001; Armstrong et al, 2005; Wood; 2005;

Deveci et al., 2008)¹⁷. The roles of victim and offender are not always static and immutable. They may be in fact dynamic and interchangeable (Fattah, 1992). There is the idea that most juvenile violence occurs in the context of fights and mutual combat with a mutually shared responsibility (and consequently no victim) (Finkelhor, 1995a). Murphy & Eisenberger (2002) speak about a conflict representing a complex interaction that involves a provoking event, initial opposition from one child, further opposition from the other child, and an eventual ending of mutual opposition and Aye Maung (1995, p. 21) states that „the fight that a respondent starts one week, may invite an assault the week after“. Incidents between adolescents may be seen as an interactive process in which the „victim“ as well as „the offender“ has a share and it may be difficult to distinguish the different roles (Aye Maung, 1995; Smith et al., 2001). On the one hand, this perception of victimization as a part of an interactive process with a shared responsibility of the persons involved may be the result of ignorance and discrimination as similar scenarios between adults are seen as crime and victimization (Finkelhor, 1995a). But on the other hand, it may also be the case that adults pay more attention to labeling someone as offender or as victim. Adults in general do know what is wrong whereas that is not yet the case with minors. Consequently, an incident between youngsters may be seen as a problem and an expression of testing the limits.

The correlation between victimization and offending among adolescents and the interchangeable roles of victim and victimizer is not beneficial to the status of the innocent victim because this goes against the idea of the ideal victim who has no role in his or her victimization and the idea of the ideal offender who is bad and evil.¹⁸ The idea that victims and victimizers are interchangeable and may be part of the same population may frustrate the public as this is in contrast with the popular impression of the distinction between criminals and their innocent victims and the idea of a sympathetic victim to empathize with and a hateful criminal to blame (Singer, 1981; Fattah, 1992)¹⁹.

¹⁹ McShane & Williams (1992) state that the stereotype of the innocent victim and the victim/offender dichotomy serve the maintaining of social order. For sustaining social order we need to set examples in which the offender exemplifies evil in contrast to the victim who symbolizes innocence and purity. Furthermore, they point out that our popular conception of victims is derived from a middle-class framework which requires that victims do not participate in offences and that the roles of victims and victimizers remain static.

²⁰ As this stereotype is not only formed in interaction with the victim but often already exists before, strengthened by the media and daily language, it is hard for the victim to present a different picture of his- or herself (Cuyvers, 1986).

Another condition for being an ideal victim is making your case known and referring to your status of ideal victim. In general the reporting of crimes by victims is low. Research shows that young people do not report many crimes to the police. They report crimes even less than adults do. In this way, their victimization is not known and consequently they are not seen or recognized as victims (Aye Maung, 1995; Mori Youth Survey 2004; Goudriaan, Lynch & Nieuwbeerta, 2003). This is also connected with the position of minors: their dependency on others involves limited possibilities to obtain every status, the status of victim included (Morgan, 1988). Furthermore, the following questions can be asked: Do the police take adolescents reporting victimizations seriously? How do the police follow up the reports? Are there filters at the level of the police hindering the right to access of adolescent victims (Ponsaers & Bogaerts, 1998)?

Obtaining the victim status is not only about being recognized as a victim by others, the victim has also to recognize his- or herself as a victim: „Victim status is something that has to be achieved and involves a process from the individual recognizing that they have been victimized and thus may claim the label, through to being socially and/or in policy terms being recognized as a victim“ (Walklate, 2007, p. 28). Victims may not be keen on having the victim status because of the public stereotype and the stigma of weak, helpless beings (Cuyvers, 1986; Van Dijk, 2008)²⁰. Or like Spalek states: „If the stereotype of victim as „passive“ and „helpless“ is perpetuated in dominant representations of victimhood, during a time when individual strength is

valued in society, then individuals may not situate themselves in terms of victimhood, despite the harms experienced, due to their distaste for the label „victim“ and the kinds of stereotypes that it elicits“ (Spalek, 2006, p. 9). Adolescent victims may keep their victimization a secret because of the fear of losing peer group esteem and self-esteem. Older boys especially are not keen on admitting to being a victim because they fear losing status with friends, they want to „preserve their sense of „macho“pride“ (Morgan & Zedner, 1992, p. 52).

All this leads to the conclusion that in the hierarchy of victimization with on the one side the „ideal victims“ and on the other side those victims who do not get the victim status or are even seen as „undeserving victims“ getting nearly no media attention (and consequently not known to the broader public) (Greer, 2007), adolescents can be localized in this last category. This is not without consequences. Those victims who fit in the stereotypical picture of weak, vulnerable and needy – and thus can be considered as „ideal victims“ – get attention, sympathy, help and compensation (Christie, 1986; Fattah, 1986 & 1992; Walklate, 2007; Van Dijk, 2008). As adolescent victims do not fit this picture (for the reasons given above), this victim group is often left out in the cold

3. Adolescent victims as good as absent in the research field of criminology

„The need for new theory and research is vast and urgent, and ranges from how children view victimization at different ages and how it affects them, to what can be done to minimize their risk“

(Finkelhor, 1995b, pp. 188-189)

The lack of attention for adolescent victims in the broader society, is also found in the social, criminological sciences: „While the field of juvenile delinquency stands as a monument to social science, one of its most mature, theoretically and empirically developed domains, the topic of juvenile victimization – the opposite pole of the offender-victim equation – has been comparatively neglected. It is true that one can find substantial research on specific child victimization topics like child abuse or sexual assault, but there is nothing like the integrated and theoretically articulated interest that characterizes the field of juvenile delinquency“ (Finkelhor & Hashima, 2001, p. 49). When we look specifically at the period of adolescence, we can say that as it is characterized by lack of stability, quick temper, frequent changes in mood and development of independency (Bozhovich, 2004), the adolescent period is an interesting period to research on the subject of delinquency prevalence. Nevertheless, besides that it is also interesting to research victimization among adolescents as exploration and independence-seeking may also increase the vulnerability for risk (Kutner et al., 2000). There is however not much scientific information about the specific pattern of victimization in adolescence as most criminological research concerning adolescents is focused on delinquency rather than on victimization (Lauritsen et al., 1991). Partly because of this gap, biases and stereotypes about victimizations among minors and adolescents in particular may „flourish in the professional criminology as well as in the popular culture“ (Finkelhor, 1995a, p. 18). They even may color interpretations given to hard data (Finkelhor, 1995a).

Twenty years after Morgan (1988) wrote that the knowledge about the needs of some victim groups is limited, this statement can still be confirmed. The theory concerning victims of crime is underdeveloped in comparison to the theory and research concerning offenders (Wittebrood, 2006)²¹. Luckily, our knowledge about victims is in a state of continuing development (Hoyle & Zedner, 2007).

21 Boutellier (1993) points out that victims wanted nothing but had to undergo something accidental. This makes their position, in comparison to this of the authors of the harm – the offenders – problematic and even uninteresting as victims have nothing to tell about their motives, their considerations or certain acts that led to the incident but at the most have only anecdotal facts to tell about the event and its consequences.

The term „victimization“ has to be refined by use of research. Victimization is not experienced by everyone in the same way and the assimilation of becoming a victim and the consequences of the crime are also determined by several variables among which the nature and the seriousness of the crime and the personal characteristics of the victim (Christie, 1986; Morgan & Zedner, 1992; Walklate, 2007), yet only too often we discuss the needs of victims in general. Certainly we need more detailed research on different categories of victims (depending on age, status, gender, ...) as well as on victimization as a result of different crimes.

3.1. Need for research concerning adolescent victims

During the past years criminological theory and research about experiences, perceptions and needs of young victims stayed a virgin territory. Criminological research concerning young

victims is limited at home and abroad (Finkelhor, 1995a; Burssens, 2006). Finkelhor (1995b) and Finkelhor & Hashima (2001) call this absence of scholarship ironic because minors as a group are at a high risk for victimization, even at a higher risk than adults. In spite of this fact, the primary interest in criminology has been concerned with minors as (potential) delinquents rather than as victims. Nonetheless, adolescent victims deserve the same (scientific) attention as adolescent offenders (Hashima & Finkelhor, 1999). To get young people out of their dominant public status of offender at the expense of their victim status²², more epidemiological research concerning adolescents is needed. Facts and figures can overtrump perceptions and misconceptions so that the victim experience of adolescents can become widely recognized. Then this victim group can also, if they so want, appeal to their victim status and the help to which they have a right because of this status.

²² We only want to bring up for discussion the one-sided label as potential offender and the misconception of the minor as victim, without disregarding the problem of young people as offenders as such.

²³ Whereas Wood (2005) analyses data about victimization among young people and compares them to victimization among adults based on the British Crime Survey of 2003 in which persons from 10 to 65 years of age were questioned, the analysis of Aye Maung (1995) is based on results of young people who were selected on the basis of the sample of the British Crime Survey for persons of 16 years or older, but nevertheless got a separate questionnaire.

So, first and foremost, there is a need for reliable epidemiological data on victimization across the different stages of childhood and adolescence. The facts that are known about the extent to which adolescents do become victims of crime, come from studies which are not specifically aimed at victimization but consist of a broader research on adolescents in which crime and victimization are just a (small) part (Smith et al., 2001; MORI, 2004; Armstrong et al., 2005; Vettenburg et al., 2007). Surveys of victimization among adolescents are often part of broader surveys that also search for victimization among adults (Aye Maung, 1995; Wood, 2005) ²³.

Epidemiological data is crucial, but we need to go further than pure numbers and prevalence. With the exception of some researches like the research of Morgan & Zedner (1992) in which interviews with direct and indirect victims and their families were also held, research concerning victimization among adolescents is often limited to victim surveys. So they do not permit to contextualize the experiences of victims nor to get an idea of the perceptions of victims (Spalek, 2006; Francis, 2007). Nonetheless, needs of victims are not „fixed entities“ (Walklate, 2007, p. 105). Those needs vary according to the personal coping skills of victims and the people around them. This means that the needs of young people could be different from those of adults or elderly victims (Fattah, 1999; Walklate, 2007).

Within the category of adolescent victims it is also interesting to take other characteristics of these victims into account besides their age. For instance would boys become more victimized than girls? (Finkelhor & Ormrod, 2000; Finkelhor & Dziuba-Leatherman 1994a; Hartless et al., 1995; MORI, 2004; Armstrong et al, 2005; Wood; 2005; Deakin, 2006; Deveci et al., 2008; Finkelhor et al., 2009). Further research concerning gender differences in the risk of becoming a victim of different crimes as well as research about possible gender differences in the manner of coping with the victimhood would bring some supplemental theoretical insights. In addition research about the persons and instances that come into contact with victims could contribute to the theory. After all, a lot is already written on the extent of help and support instances for adult victims and in how far they fulfill the needs of victims. „Conversely, discussion about the effects of crime on children, the types of help they need and the extent to which it is available has hitherto been comparatively meagre” (Morgan & Zedner, 1992, p. 145). Because of this, little is known about services that help adolescent victims and whether they meet the needs of those young people or not (Morgan & Zedner,

1992, p. 146). Nevertheless, based on research concerning the perceptions and needs of minor victims, the support and care by the police and caretakers can be refined and adapted to help young victims better. Young victims do not often report their victimization to official instances but usually tell it to people in their surroundings (Finkelhor & Dziuba-Leatherman 1994a, Aye Maung, 1995), so it would also be interesting to do further research into to whom adolescents give vent to their feelings and who they consult. Because adults do not often see incidents among young people as crimes, it would also be interesting to check how adults react when adolescents of about 14-16 years old tell them they were victimized.

Finally it is also interesting to do research about the adolescent victim's sense of justice and to study in which way they want their offenders to be sanctioned (Finkelhor & Hashima, 2001). Previous research proves indeed that 14-15 year olds are less inclined to consider incidents as crime (Aye Maung, 1995). The question is then which reaction they want for the offender.

3.2. Need for specific research on victimization by different crimes

Next to a refining of the criminological and victimological knowledge on specific victim categories by use of research, there is also a need for refining the term „victimization” according to the type of crime. Victims of violence may for example have other needs than victims of property crimes (Fattah, 1999). To meet the needs and expectations of victims and restrict secondary victimization, appropriate care is necessary. To be able to supply this individual care, we need more knowledge on which help is suitable for which victims of which crimes. For minor victims in general and adolescent victims especially, this means that the scientific attention has to broaden out so that not only victimization by incidents like (sexual) abuse but also victimization by for example theft and violence are put under the microscope. This among other things, because of their frequency, the concern of adolescents of becoming victim of these facts²⁴ and the effect they produce on the daily life of young people (Finkelhor & Dziuba-Leatherman, 1994b). Research on those forms of victimization is also important as a lack of research may contribute to an underestimation of these victimizations if they are not specifically asked about (Finkelhor, Ormrod et al., 2005).

²⁴ Young people indicate being more concerned about being beaten up by peers than being sexually abused (Finkelhor & Dziuba-Leatherman, 1994b).

Conclusion

Mythologies, stigmas and stereotypes do not only exist within the interaction between deviant persons and the rest of society (Lemert & Winter, 2000), but also between (some groups of) victims and the rest of (adult) society. The victim may in general not longer be „the forgotten man“ (Shapland, Willmore & Duff, 1985) and no longer be in the „periphery of the criminal justice system“ (Mawby, 1988b, p. 127), for specific victim groups this still holds. Whereas adolescents are constantly ascribed a status as potential offender, they seem to have to earn their status as victims (Brown, 2005; Morgan & Zedner, 1992). This is not only contrary to empirical reality but also implies a certain danger of secondary victimization. When the tendency to see young people as potential offenders rather than as potential victims exists within services such as the police, this may lead to adolescents not being taken seriously (as victims) and so to a less careful handling of this victim group (Morgan & Zedner, 1992). So it comes down to recognizing „the two sides of the coin“ : the damage caused by and the crime committed by adolescents as well as the damage done to and the crime committed against adolescents (Parker, 2004, p. 248).

Given the prevalence of offending among young people, it is not totally surprising that adolescents are often seen as (potential) offenders (Francis, 2007; Newburn, 2007). But given the frequency of victimization among adolescents the connection between adolescents and victimization should be made just as strong if not stronger than between adolescents and offending. Epidemiological research can contribute to this. By coming „from a deterministic picture of the deserving, innocent victim to a more realistic appreciation of what affects victims and who they are“ (Shapland, 1986, p. 231), we can assure that the idea of adolescents as victims of crime no longer remains an „area of relative silence“ (Brown, 2005, p. 213). Furthermore, by doing so, we may recognize that the experiences of minor victims are far broader than (sexual) abuse (Morgan & Zedner, 1992) and stereotypes and myths about the victimization of minors may be undone (Finkelhor, 1995b).

Research on victimization within strictly defined age categories may also give a clearer view on which minors become victimized most by which crimes²⁵. Just as we can observe that crime age patterns differ according to the type of crime and factors such as gender (Greenberg, 1985; Steffensmeier et al., 1989; D'Unger et al., 2002), more research on victimization in relation to the type of crime and to personal characteristics may lead to interesting theoretical insights. The research of Finkelhor et al. (2009) may serve as an example: the Developmental Victim Survey (DVS) questions 34 different forms of victimization with attention to different age categories and other characteristics as gender²⁶. Furthermore the question needs to be further researched whether the high prevalence of victimization among youngsters is owing to the high prevalence of offending among youngsters or whether in other words young offenders mainly commit intergenerational crime against their peers.

25 Finkelhor speaks about „developmental victimology“: the study of victimization across the changing phases of childhood and adolescence (Finkelhor, 1995b).

26 http://www.unh.edu/ccrc/developmental_victimization_survey.html (27/04/09)

More in-depth scientific research on specific forms of victimization among different age categories and on how they perceive their victimization may contribute to the knowledge and insight about this victim group. In this way we may make adolescent victims more visible and redeem the one-sided perception of adolescents as potential offenders. After all, in criminology we dispose of stereotypical associations concerning crime, not only in the sphere of the violent offender but also in that of the suffering victim (Boutellier, 1993).

Victimological research is carried out partly because of its significant implications for the provision of services to victims (van Dijk, 1999). So from a victimological point of view one can point out that it is only by researching and understanding the different forms of victimization among adolescents that a decent social policy can be worked out to decrease and prevent the problem of all and not only of some victimizations. As a result we may hope that victimization programs and institutions will no longer remain fragmented and

dedicated to restricted proportions of the victimization spectrum but that they can be used by all victims, adolescent ones included (Finkelhor & Dziuba-Leatherman, 1994a; Finkelhor, Ormrod et al., 2005).

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Providing victim support services

Chris Wade **Victim Support England & Wales**

Background

Victim Support is an independent national charity for people affected by crime in England and Wales. We provide information, practical assistance and emotional support to victims and witnesses. In 2008/9 almost 1.5 million people we referred to us for help.

Our service is provided by 1200 staff and 6500 volunteers through 170 offices. All our personnel are specially trained and accredited before they take on core or specialist types of work. There are 3 strands to Victim Support work; namely Victim Support community work supporting victims usually in their homes or over the phone, the Witness Service helping people through the court process and SupportLine - a confidential telephone help-line for people affected by crime.

The community service offers;

someone to talk to in confidence

information on police and court procedures

help in dealing with other organisations

information about compensation and insurance

links to other sources of help

The witness service ;

Operates in every Crown and magistrates court in England and Wales

Helps prosecution and defence witnesses

In 2008/09 we supported over 285,000 witnesses

Throughout 2007/8 Victim Support completed the merger of its 79 federated member charities into one large national organisation. This move has allowed us to operate with better consistent quality standards and to act as one voice for victims and witnesses in England and Wales.

Victim Support Plus

In December 2005, the British Government announced proposals for wide-ranging reforms to improve services for victims of crime. The Office of Criminal Justice Reform (OCJR) secured funding to pilot victim care

units in Greater Manchester (Salford branch), Nottingham city and North Yorkshire, which ran over a six-month period ending in April 2007.

The pilot was a success. More victims were contacted and supported more quickly, and victim satisfaction rates were high. The findings applauded Victim Support for doing what we are good at: allocating volunteers to delivering emotional support and listening. And volunteers and staff felt that they were offering a more valuable and complete service to victims.

As a result of the success of the pilot, the processes that were piloted in the Victim Support Plus units have now been rolled-out across Victim Support in England and Wales.

Objectives

The objectives of the service are to help to improve the level and quality of contact with victims of crime from all sections of the community, to assess victims' service needs, and implement a range of quality services to support identified needs.

Victim Support :

- deliver a victim-focused service when it is most needed
- identify and address previously unmet service needs
- offer victims of crime and their families locally arranged support which is tailored to meet their immediate and longer term practical and emotional needs
- offer consistent support to victims regardless of whether or not they have reported the crime to the police, or where they live
- give useful information and advice to victims and their families about the criminal justice system and other agencies that can help them
- maintain and enhance links with other agencies including liaising with the Witness Service and criminal justice agencies and other key stakeholders
- commission and deliver cost-effective services without duplicating services that already exist.

These objectives are met by;

An assessment of needs being carried out for all victims by one of our Victim Care Officers usually over the telephone with the client within 48 hours of referral.

This means the service we or our partners subsequently deliver is based on their expressed needs rather than our assumptions of need.

Our volunteers are only asked to contact clients who specifically request a service.

We can efficiently refer on to partner agencies.

Our Victim Support Plus units have extended operating hours from 8am to 8pm

This means we can often talk to clients at a time more convenient to them.

We are accessible for longer hours.

We have a local hot-line which clients can call with any question related to being a victim or witness of crime.

We carry-out follow-up calls to ascertain the quality of our service and how well we met the needs.

This enables us to check and address quality issues in our service and that of our partner agencies.

It allows us to identify and address gaps in local service provision.

We can commission some practical services

We have a pool of money that allows us, following the needs assessment, to commission some practical services such as lock-fitting, glazing and counselling at no cost to the client.

Better performance Management

We have introduced a wide range of key performance measures

And new case management and performance management computer systems

Conclusion

Victim Support has with partnership from the British Government has built on 35 years of service to victims and witnesses; a new business model to greatly enhance our service to clients.

The central premise of the new business model is built around centralised units allowing individual needs assessments and tailored services to meet the customers' expectations.

This has been augmented by partnership with other service providers, quality management and free practical services.

With this new model Victim Support is better placed to provide a higher quality, targeted service in a speedy manner to even more victims and witnesses of crime.

Chain co-operation as a basis for success

*Roland R. Knobbout LLM **Victim Information Counter***

Many victims forget that they do have rights

In this article we take a look at the Victim information Counter The Hague: the power of chain co-operation, the possibilities and desirability's. Especially the co-operation between organisations aimed at victim rights and victim care gives an enormous boost to the victim to recover and to go for his rights.

The Victim Information Counter The Hague(VIC) operates according to a unique 1-window format, which means that victims of crimes and dependants of victims can turn there for help in many ways. Victims and dependants benefit a lot from getting adequate guidance to help them to exercise their rights and to receive personal support.

The VIC The Hague is a fast developing co-operative venture which is getting well known throughout the Netherlands.

The Victim Information Counter The Hague(VIC) in The Netherlands:

"Chain co-operation as a basis for success"

The Victim Information Counter The Hague is a co-operative venture between different organisations in the field of victim rights and victim support. The Public Prosecution Service, being the Public Prosecutor's Office (PPO) at the District Court and the PPO at the Court of Appeal, both in The Hague, Victim Support The Netherlands, districts Haaglanden and Center, the police regions Haaglanden and Hollands-Midden and the Criminal Injuries Compensation Fund together founded the Victim Information Counter (VIC) The Hague at the end of 2005.

The VIC The Hague operates according to a unique 1-window format, which means that victims of crimes and dependants of victims can turn there for help in many ways. The employees of the chain partners work together at the Palace of Justice in The Hague and can be contacted at telephone number (NL) (0) 70 381 1919 and fax number (NL) (0)70 3811908. The VIC can also be reached digitally at www.sip-den Haag.nl. This website offers information in understandable language about victim rights.

The operating method of the VIC is focussed on the victim and on quality and it also aims at guaranteeing the rights of the victim, while offering him assistance and bringing forward his interests during the criminal proceedings.

The special care offered to the victim will save him time and irritation and prevents a lot of distress. For instance in the court room, but also later when someone might be partially certified incapable for work because of traumatic experiences.

The concentration of services rendered by the different organisations within the VIC simplifies the procedures for the victim, thus reducing the risk of secondary victimisation.

Thanks to this co-operation, the chain partners all profit in the area of efficiency and they can concentrate their knowledge in different fields and share it.

General and nation wide developments.

The VIC The Hague is a fast developing co-operative venture which is getting well known throughout the country. Because of its built up expertise, it serves as an example and information desk for other VIC organisations in the Netherlands.

Thanks to the chain co-operation activities in the field of victim care have increased. One must think of many services to the victim that have been laid down partially in legal regulations.

Cross-border victims

The VIC also looks after the interests of victims from within or outside the EU whenever they have become the victim of a crime in the Netherlands. In many cases this concerns businessmen and tourists who have had things stolen from them, but also victims of violence and human trafficking.

At the website one can download a joining form, also translated in English, French and German, enabling a person to claim damages from a suspect. By completing a joining form, victims or their dependants may join in The Netherlands as an injured party in the criminal proceedings and claim damages from the defendant. The VIC can be of assistance to the victims within or outside the Netherlands for instance by helping them filling in joining forms and giving advice as to which damages can be claimed from the defendant, either material or immaterial. This involves close co-operation with the Tourist Assistance Service and the Interpreters Service.

If needed, the VIC acts as an intermediary to effectuate the rights of Dutch citizens who have become victim of crime in a foreign country.

Intake/ Call Centre of the VIC: Assistance and information for victims

The police or Victim Support hands over the names of crime victims or their dependants to the Victim Information Counter The Hague. The VIC then organises an intake during which the victim is informed about his rights and possibilities in case of different offences. This involves outlining a realistic image of the procedures, while the victim is offered aid and support. For example, the employees of the VIC Intake/ Call Centre

provide information about the procedures at the Police and Justice departments and about the rights of the victim during the criminal proceedings. The VIC may announce whether a suspect has been arrested yet, released or suspended from pre-trial detention, or if there is a possibility to have a separate conversation with the suspect or the possibility and consequences of an agreement reached through mediation in penal matters.

Victims who apply for information must provide their name, address and case-number or official report-number. For privacy reasons, information is only provided to the victims themselves.

Most questions can be answered by the VIC right away because it has access to the different automated systems of the chain partners and because its employees are well trained.

If necessary, the call centre redirects the call to specialised employees.

Special attention to victims of serious violent crimes and sexual offences and to their dependants.

In case of serious crimes such as murder, homicide, human trafficking or serious violence or sexual offences not only special attention is paid to tracing down the suspects, but also to the victims and their dependants. It

is a very emotional experience to hear what the victims and their dependants have been through or are still going through. After a serious crime they not only have to deal with the Public Prosecution Service and the police, but also with the media. This was shown in the case of the so-called Roof Murder in The Hague in 2007, whereby the victim was filmed when he was stabbed and died shortly after. These shocking images can still be found on the internet and they have been a point of discussion ever since.

During the first phase of the investigation, during which the intake also takes place, special family-liaison detectives keep in touch with the victims or their dependants on behalf of the Public Prosecutor or the police. For very serious violent crimes, Victim Support in the Netherlands offers a dedicated case manager and the VIC serves as a coordinating and service rendering mediator between victims, their dependants and the Public Prosecutor in charge of the case as well as for the press officer of the PPS and the media, the family-detectives, the case manager and others.

When the suspect is arrested, the VIC takes over guidance and support of the victim or his dependants.

In case of serious offences the VIC invites victims or their dependants for a personal conversation with the Public Prosecutor in charge of the case. The Public Prosecutor will then inform the victims or their dependants about what they may expect during the criminal proceedings.

This conversation has mainly an informative purpose but it also gives the Public Prosecutor a chance to get an idea about the victim's state of mind. The District Prosecutor's Office in The Hague has developed a special Protocol Victim Consultations, especially designed for the local situation. In some cases victims appreciate the fact that a staff member of Victim Aid is present at these consultations.

As soon as the VIC receives information from the victim concerning his being threatened or expecting retaliations, the VIC will contact the police or the Public Prosecutor in charge of the case, who will then decide what precautions should be taken for the protection of the victim. This may result in the arrest of the threatening person or in other special orders that may be imposed to protect the victim, such as a street ban or an order prohibiting contact. In case such an order is not honoured by the (Examining) Judge, the VIC may consider an appeal or decide to take other relevant precautions.

Victims in a vulnerable position

The Victim Information Counter The Hague will offer as much as possible a personal approach and assistance to minors and victims who find themselves in a dependent position.

Victims in a vulnerable position and Victims who are summoned as a witness during the court proceedings may apply to the VIC for guidance. Another possibility is that the VIC takes the initiative for this guidance, or that they do so at the request of the Public Prosecutor or the judge.

It has been agreed with the co-ordinating Examining Judge to give more attention to the guidance of victims during the witness examination by the Examining Judge. It is the policy of the PPO at the Court of Appeal that the Public Prosecutor shall be present during the examination of the witness/victim. If the victim wishes the VIC to guide him, we will request the presence of a VIC staff member during the examination. If possible, the Examining Judge will honour this request.

Damage mediation

Before a case goes to court, it is determined whether damage mediation between the victim and the defendant is useful and/or advisable. Specialised employees of the Public Prosecution Service and the police, who are affiliated with the VIC, act as intermediaries. This way the victim receives compensation for his damage in a fast manner and in many cases the defendant may be eligible for a transaction. Moreover, practice shows that victims seem to accept the consequences of an offence much easier when the perpetrator pays compensation.

The victim's right to speak during the court hearing

The Written Victim Statement (WVS) was introduced in 2004 in the Netherlands. In addition in the legal right of a victim to speak during the hearing was established at the beginning of 2005. As Public Prosecutor in The Hague I was the first one in applying that new possibility in the Netherlands in the beginning of January 2005.

The Directive Right to Speak and Written Victim Statements requires the Public Prosecution Service to point out to the victim when this right is applicable. If victims indicate that they would like to invoke this right, they can rely on the professionals of the VIC, who will subsequently take care of the distribution of the Statements or will submit an application for the right to speak.

Without further explanation an example of a Written Victim Statement of a mother: 'Being able to say out loud at the court hearing, in the presence of the defendant, what the loss of our daughter has meant to us, made me realise that I had found an audience. This cannot take away the fact that our life has lost its lustre.'

A victim as an "Aggrieved" party can also speak during the court hearing: he can give an explanation about his damage claim verbally in court.

A victim who wants to speak in Court and a victim who wants to claim his damage will also receive guidance during the court hearing.

At this moment, the victim does not have a designated seat in the court room in The Netherlands. This has many disadvantages. The VIC has made a proposal to the District Court and the Public Prosecutor's Office (PPO) to provide the victim with a designated seat in the court room, just like the other process parties. This shows clearly that the victim or his dependants will receive an ever increasing part in the criminal proceedings.

The victim and his damage in criminal proceedings

By completing a joining form, victims or their dependants may join in The Netherlands as an injured party in the criminal proceedings and claim damages from the defendant. This form is provided to the victim by the District Prosecutor's Office, but it can also be downloaded at the website. Damage claims may involve material as well as immaterial damage, and vary between the costs for a funeral and compensation for a stolen bicycle.

The VIC can be of assistance to the aggrieved parties by helping them filling in joining forms and giving advice as to which damages can be claimed from the defendant, either material or immaterial. Aggrieved parties often do not know what they may expect in terms of the amount of the compensation that can be claimed by way of criminal law proceedings. Especially in relation to immaterial damages, the expectations can be unrealistically high. In many cases victims are informed beforehand and if necessary volunteers of Victim Support in the Netherlands who are affiliated with the VIC will offer them help with filling in those joining forms.

If needed, aggrieved parties will also receive guidance during the court hearing and they will receive advice while submitting their claim in court or while giving an explanation about their claim verbally.

The way in which a claim is assessed during the court proceedings, as well as the height of the amount of damages imposed is of great importance to the victim while coping with the consequences of the offence. The allowance of compensation offers a feeling of recognition to the victim. If a claim for damages is not or only partially allowed, the victim will not always be able to understand.

The practical purpose of claiming damages is to re-establish the financial position of the victim. It can also help in the process of coping with the grief that was inflicted. During his closing speech at the court hearing, the Public Prosecutor will indicate whether he agrees with or deems necessary the institution of (civil) proceedings or considers that the obligation to pay damages should be imposed. The judge of the criminal court will decide whether the claim for damages can be wholly or partially allowed. After allowing the claim for indemnification, the CJIB (Central Judicial Collection Agency) will take care of the collection from the defendant, so the victim himself will not have to be in charge of the collection of damages. If the perpetrator is unknown, the Criminal Injuries Compensation Fund will verify whether compensation of the damages is possible.

Guidance during the court hearing

It does occur that victims, dependants or their relatives want to be present during the hearing, but are not capable of doing so on their own. This might be due to the fact that they are not familiar with the court procedure, but can also be caused by fear of meeting the defendant again. In those cases guidance in court can offer a substantial support to the victim.

A counsellor of the VIC or Victim Support in the Netherlands will make sure that contact between the victim and the defendant is avoided as much as possible and will inform the persons involved about the procedure in court and about the position of the victim in criminal law.

The presence of a counsellor during the hearing has a calming effect. Simply 'being there' is highly appreciated. When a victim is not able to control his own emotions and threatens to disturb the peace in the court room, the counsellor will make sure that the victim can leave the room (temporarily). Afterwards, the hearing will be evaluated with the persons concerned, possibly together with the Public Prosecutor.

The request for guidance during the proceedings can also be submitted by the Court of Appeal or the District Court. For example in cases where the peace, order and safety in and outside the court room is at stake and several victims, dependants or relatives will attend the hearing. In these cases the counsellor's task is to maintain the supervision of the admittance to the court room and to offer guidance to the victim prior to the court hearing and during adjournments. In general these are trials that last several days and that receive a lot of media attention. The counsellor will make sure that the victim can attend the hearing with the least possible disturbance.

In cases where guidance in court had been organised, victims indicated that to them this support was a safe and pleasant experience. The fact that victims and dependants receive a personal and professional reception and guidance and additional information, makes that justice is done to the victim in the court room and that his emotions are being directed in a proper way.

Structure of the VIC

The structure of the Victim Information Counter The Hague and the defined activities have been outlined in the Covenant VIC The Hague that was signed on 19 December 2005. Via structural consultation between the VIC/Steering Committee Victim Support, co-ordination takes place with respect to policies and fulfilment of victim rights and victim support.

There is also active consultation between the chairman with the Court and the Court of Appeal.

The staff of the VIC The Hague consists of specialised employees of the PPS, i.e. District Public Prosecutor's Office and the PPO at the Court of Appeal in The Hague, Hollands Midden and Haaglanden Police, Victim Support in the Netherlands, regions Haaglanden and Midden [Centre] and the Criminal Injuries Compensation Fund.

The management is handled by the coordinator and the chairman.

The staff of the VIC The Hague consists of 60 employees who are divided over various clusters.

All these employees contribute to a well functioning VIC The Hague.

The policy lines for the VIC The Hague are outlined by the VIC/Steering Committee Victim Support, in which all partners of the VIC The Hague are represented. The members of the Steering Committee meet four times a year.

The co-ordinator of the VIC The Hague meets every week with the chairman of the VIC/Steering Committee Victim Support. During this consultation they focus on day-to-day business and the execution of the policy lines.

The staff of the VIC The Hague meets every month with the chairman. These meetings are very useful when it comes to bringing the staff up-to-date on developments with respect to the VIC The Hague, to giving feedback on results and to discussing specific problems and questions. The various sections of the VIC The Hague also have regular meetings amongst themselves to see to it that the working processes interface well.

The end or the beginning?

The pair of scales of Lady Justice weighing the interests of the victim and the defendant needs to be in balance. Chain co-operation between different organisations in the field of victim rights and victim support can help: victims of crimes and dependants of victims can turn to a Victim Information Counter for help in many ways. The operating method of a VIC is focussed on the victim and on the quality and it also aims at guaranteeing the rights of the victim, while offering him information, assistance and bringing forward his interests during the criminal proceedings.

Discussing the Concept of Victims of Crime Today

David Miers **Cardiff University**

Recent national and international events have reminded us of the essentially contested nature of the label, 'victim'; for example: the dependants of both 'terrorists' and 'civilians' living in Northern Ireland as persons potentially equally to be regarded as 'victims' of its past sectarian conflict, or child soldiers in various African states who are coerced (victimised) into killing persons (victims) from other ethnic groups. Many other instances could be cited. This discussion reflects on the elements that comprise the social construction of the label 'victim', and on the expectations that flow from its attribution in any case. Reference will be made to the populist response to claims that individual instances of suffering be recognised as warranting benign intervention, 'we are all victims now', which seeks to question the legitimacy of the label in those particular cases. While recognising both the bias in this response and the socially contingent nature of the label, I will suggest that its undifferentiated or indiscriminate use raises difficult questions about the extent to which the consequent expectations may be met. Areas of legal intervention discussed will include restorative justice and crime victim compensation.

1 Introduction

Nearly 20 years ago I wrote an article published in the first volume of the *International Review of Victimology*, which offered a critique of positivist victimology (as exemplified in the work of Mendelsohn, von Hentig, Wolfgang, Amir and others) and considered an alternative analysis of what it is to be called a victim. I argued that in its attempt to explain victimisation by an examination of those held (typically by formal criminal justice processes) to be victims, and in its particular concentration on the notion of victim-types, on victims of interpersonal crime and on those who contribute to their own victimisation, positivist victimology had been unable to explain or advance our understanding of why and how some persons who sustain harm are regarded as victims of that harm, and others are not.

My argument was that the process of calling a person who had sustained harm a 'victim' performed important social functions that reflected our view of the world in which that harm had been sustained. So equally did the process of withholding that label. In either case there were implications for how that person was to be viewed in terms of official and unofficial societal norms.

My line was that the concept 'victim' is complex and contested. It involves a sequence (often replayed and repeated) of claim and negotiation between a person who has directly sustained some harm (or other unwanted experience) (or that person's advocate) and those who have a social status to recognise that harm as qualifying for the label, 'victim'.

2 Labelling people as victims

I considered that that sequence could be analysed as comprising three components.

2.1 Self-labelling

The first of these is an act of self-labelling on the part of the harmed person. This requires an initial recognition of the potential application of the label, but as the first victimisation surveys showed, what

constitutes 'victimisation' for some may simply not carry that same salience for others. And some whose claim to be recognised as a 'victim' may be unhesitatingly accepted by those who have the power to ascribe it may well reject it. This was so with those women who preferred to regard themselves as 'survivors' of rape or domestic violence, rejecting the attributes of powerlessness and learned helplessness associated with the 'victim' label (Spalek 2006, 11).

2.2 Ascribing the label

The second component is the ascription of the label by some relevant and significant group. From the observer's standpoint, an initial and major problem in deciding whether to ascribe that label to any one instance of harm lies in the fact that social cues and signs may be vague or ambiguous. One response to this pervasive social phenomenon has been the development of conventions that stereotype certain instances of suffering as victimising events. Paradigm instances are elderly victims of robberies, burglaries, assaults and the like; children who are sexually abused; people killed or injured by terrorist activity; and the victims of medical negligence (Nils Christie's 'ideal victims'). These victims are often identified as part of 'a disturbingly archetypal confrontation between a poorly controlled dangerous criminal and an innocent, defenceless middle-class victim' (Garland 2001, 133). Some of these bounded categories' (Watson, 1976; Sudnow, 1965) are institutionalised as legal, medical or psychiatric norms; others, such as those held within family or peer groups, may be less formalised. Whether formalised or not, these conventions may also vary considerably in the precision of their definition. Legal norms tend to be more precisely formulated than those applicable in less formalised settings, but indeterminacy as to what elements of the harm are to be regarded as significant in the consideration of an appropriate response is endemic to these conventions.

Many examples could be given of the complexity of this process. I choose two from the recent history of Northern Ireland. At no point during 'the Troubles' in the 1970s and 1980s did those responsible for the official recognition of individual harm as deserving the label 'victim' concede that it might apply to IRA or UVF terrorists killed by the British Army. Those who went on hunger strike in the Maze Prison in the 1980s presented themselves as political prisoners (another deeply contested category) and as victims of state violence, but the UK government always regarded that claim as spurious. Yet in March 2009 a cross-party group proposed that the dependants of both 'terrorists' and 'civilians' living in Northern Ireland should be regarded as 'victims' of its past sectarian conflict. The group proposed that all such victims should receive £12,000 by way of compensation for their experience. This inevitably generated intense opposition from the dependants of those civilians who had been murdered by the terrorist groups. In short, the relatives of these terrorists, though they may themselves have been innocent of any terrorist activity, did not deserve the label. The central point, which I shall explore later, is that the use of the label in their case contaminated or in other ways devalued the loss of 'innocent' life.

Terrorists (as opposed to freedom fighters) are non-ideal victims. Hamill (2002) is an excellent account that explores this in the context of the punishment beatings meted out to paramilitaries in Northern Ireland.

I drew these thoughts from a variety of sources which I read while undertaking my doctoral studies on crime victim compensation: why were some crime victims eligible for compensation and others denied it? Why were crime victims treated less well than others? The work of Walster and Berscheid was important here (compensating harm as a matter of social psychology), as was Melvin Lerner's 'just world' thesis: that good things happen to good people, and vice-versa; there are echoes here of Sykes and Matza's powerful critique, techniques of neutralisation. Besides social psychology and criminology, where positivist criminology was similarly being criticised for its inability to explain 'how the notion of "crime" was socially constructed' (Woods, 2006, referring to David Garland's critique, *Culture of Control* (2001)), social theory offered insights, notably labelling theory, which was developed in this context by Martha Burt (1983) and Edward Ziegeheggen (1978).

2.3 Being a victim

I said that there are three elements: the third is that of being a victim. As the process of labelling a person is a social construction, so being a victim is a social role that carries with it a bundle of expectations: these are held of and by victims. In terms of expectations of them, victims might be expected not to exaggerate their suffering, any more than persons who are medically ill – another social role – would be expected to over-state their illness or its consequences in terms of the suspension of the normal expectations of them – to go to work for example. (A malingerer is a victim who abuses the sympathy that normally accompanies the role.)

Likewise we might tolerate a victim expressing anger or even vindictiveness against the offender. But here too there are limits, some legal, to what the role of crime victim properly entails. Anger mediated through the court system is acceptable but not through vigilantism (victims as offenders: Miers 2000). But look again at the contested issues here: can victims properly (in their view) express their anger through the criminal justice system? Victim impact statements and RJ are modalities that seek to address that question. The case in England of the householder who killed a man who had burgled his house but was then convicted of murder was popularly lauded as a hero 'victimised' by the law is instructive. Tony Martin in fact shot his 'victim' in the back as he ran away, and that is why he was prosecuted. But there is no end of stories, largely driven by the right wing press, of 'innocent' householders and others who kill or seriously wound in self-defence, but who, on the law, acted without justification (Spalek 2006, 22-24). They are, like Tony Martin, presented as 'victims' of a pernicious and contrary criminal justice system that fails real victims and does nothing to punish criminals. There is, in short, a serious political agenda associated with the 'victim' label, especially in crime. This point has of late been powerfully made by David Garland (2001; 11-12, 121-22, 143-44).

In terms of the expectations they may hold of others, victims may expect sympathy and various forms of benign intervention designed to ameliorate the harm. These may be entirely informal as in the case of families or peers, or formal as in the case of officially recognised medical, financial and other remedies. In terms of those families, peers and social systems a vital consequence is that the 'victim' now has a legitimate expectation that some resource will be allocated to her. One of the central points I want to make, and to which I will return, is that to label a person a 'victim' has significant resource consequences for both private and public economies. A family or a peer group that labels one of its members a 'victim' accepts that it will allocate emotional energy into a sympathetic response, assume his routine obligations, possibly give up a job to engage in extended home care, and so on. In the case for example of formal compensation schemes, public funds are engaged. And in both cases those resources must be found from an ultimately limited pool upon which other claims may properly be made by other family members or, where public funds are concerned, such other social priorities as education or social welfare.

3 Desert and Innocence

It is in part for these reasons that it is also important to recognise that 'being a victim' carries with it the requirement that the person suffering the harm is viewed as blameless, as not responsible for being a victim. The notion of blameless or innocent suffering is especially acute in connection with criminal injury compensation schemes. I would like at this point to refer to the results of a research project in which I was engaged in 2008. This was an Analysis of the application of Directive 2001/80/EC relating to compensation to crime victims. The Directive required Member States to set up schemes facilitating access to compensation for victims of crime in cross-border situations, based on their own national compensation schemes, with an implementation deadline of 1 January 2006. The research was commissioned by the EC and carried out by a London research group, Matrix Insight, to which I acted as an expert independent adviser. The report was completed on 12 December 2008.

I have dealt at greater length in this paper with the background to the Directive and to the main results of the research. In the interests of time I will deal only with two of those results:

Victims who contribute to their victimisation will generally have their compensation reduced or their claim rejected altogether.

A substantial majority of Member States do not exclude victims with a criminal record

3.1 Directive 2001/80/EC relating to compensation to crime victims

In 2004, the Council of the European Union adopted Directive 2004/80/EC which provided that 'crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed'. The Directive required Member States to set up schemes facilitating access to compensation for victims of crime in cross-border situations, based on their own national compensation schemes, with an implementation deadline of 1 January 2006. Article 19 of the Directive provided that the Commission would 'present to the European Parliament, the Council and the Economic and Social Committee a report on the application of the Directive', no later than January 1st 2009.

Following the Council conclusion in Tampere in 1999, which called for minimum standards on the protection of victims of crime, in particular in terms of access to justice and to compensation for injury and damage to victims, the European Commission published a consultation paper, Compensation to Crime Victims COM (2001) 536 final (28 September 2001). Based on this the Commission's Proposal for a Council Directive was published a year later: Compensation to Crime Victims (COM (2002) 562 final (16 October 2002)). On 29 April 2004, the Council adopted the Directive.

Article 1 of Chapter I required Member States to ensure that the victim of a 'violent intentional crime' committed in a Member State in which the victim was not habitually resident had the right to submit an application for 'compensation' in that State. That application should be made with the assistance of the Member State in which the applicant was currently residing, termed 'the Assisting Authority', whose obligations to the victim were set out in Articles 4-11. The Assisting Authority was excluded from any assessment of the application, which was solely a matter for the Member State to whose compensation scheme the victim was applying, the 'Deciding Authority'. By Article 12.1 of Chapter II access to compensation in cross-border situations should operate on the basis of Member States' own national compensation schemes through the 'Deciding Authority'.

Because in 2004 they did not have their own compensation schemes, Article 12.2 provided that Member States 'shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees 'fair and appropriate compensation' to victims.' It followed that if a Member State did not have a national scheme in place to which applicants covered by Chapter I could apply then they would be required to create a 'compensation mechanism', as stated in paragraph 7 of the Preamble.

3.2 The Research and General Findings

By the time that the research was conducted there were 27 Member States. Greece and Italy had not yet implemented their own schemes. The results are therefore based on 25 MS, although not all responded to the quite lengthy questionnaires.

Our general findings were, in summary:

- 1 All Member States provide compensation for victims of intentional crimes against the person.
- 2 A majority of Member States excludes unintentional injuries, whether to victims or their relatives.
- 3 The vast majority of Member States provide compensation for both personal injury and death.
- 4 Disease and mental injury are generally covered.
- 5 Close relatives of homicide victims are eligible for most schemes.
- 6 All but two Deciding Authorities impose a time limit for the completion and submission of a claim.
- 7 Victims who contribute to their victimisation will generally have their compensation reduced or their claim rejected altogether.
- 8 A substantial majority of Member States do not exclude victims with a criminal record
- 9 The vast majority of schemes provide compensation for financial loss arising from the injury and most provide compensation for longer term disabilities.
- 10 Some schemes operate a tariff that fixes a financial value to specified injuries.
- 11 A majority have adopted the Commission's view that a scheme should impose an upper limit on the total compensation in any case.]

3.3 Delinquent victims: victims who contribute to their injuries

Two contentious issues arise here: should compensation be refused or reduced where the victim was causally responsible in some way for his injuries, and should a claimant's criminal record be relevant to the issue of eligibility?

These matters were discussed at some length both in the minimum standards set by the Council of Europe in its 1983 Convention and by the EC in its 2002 Proposal. In the case of the first of these questions, compensation schemes have historically permitted the claims agency to refuse or reduce compensation where the claimant was to some degree the author of the injury. This is reflected in Article 8 of the Council of Europe's minimum Analysis of the application of Directive 2001/80/EC relating to compensation to crime victims standards, paragraph 1 of which provides that 'compensation may be reduced or refused on account of the victim's or the applicant's conduct before, during or after the crime, in relation to the injury or death'. Paragraph 2 adds, 'compensation may also be reduced or refused on account of the victim's or the applicant's involvement in organised or his membership of an organisation which engages in crime of violence'. These criteria justify reduction or refusal of compensation because there is a causal connection between the victim's behaviour and the injury, or, more broadly, an element of guilt by association with criminal behaviour.

In answer to the first, the European Commission's minimum standard is contained in Article 7 of the Proposal on which the Directive is based, and is limited to a causal connection between the victim's conduct and the injury. The Article provides: 'Member States may provide that compensation shall be reduced or refused on grounds of the behaviour of the applicant in direct relation to the event that caused the injury or death'.

The research found that of 23 respondents (not all 27 Member States responded to every question) 21 answered 'yes' to the question, 'does your scheme provide that a claimant who was in some way casually responsible for the injuries sustained may be refused compensation or receive a reduced amount?'

Question 26 focused on the kind of claim envisaged in paragraph 1 of Article 8: 'Does your scheme provide that a claimant who was in some way casually responsible for the injuries sustained may be refused compensation or receive a reduced amount?' The answer from 23 respondents was, with two exceptions (LV and SK), unanimously positive. (These capitals (LK, SK and the others below, are the abbreviations for the answering Member States: the full report on the EC website explains this and other matters concerning Member States' responses).

Question 27 asked for further detail where the answer was in the affirmative, and it prompted a number of comments that elaborated their applicable criteria. Compensation may be reduced or refused where the injury was sustained in a fight in which both parties had been engaged (DK), or the victim had provoked (LT) or had a continuing (violent) relationship the offender (LU), or a fight with several persons (NL), or was otherwise involved in the event (CY, MT, SE). A reduction could also apply if the victim was involved in drug dealing (NL) or was responsible for or involved in intentional crime (DE, EE, PL). One respondent referred to legal provisions that specify when the agency may so decide (ES 17, ES 5). A broader discretion is seen in schemes that operate on the basis of conduct that is offensive to a sense of justice or public order (PT), that decide cases on their merits (IE), or respond as is 'reasonable' in the circumstances (FI). One respondent commented that compensation may be reduced or withheld with regard to the victim's social situation and to what extent the damage may be attributed to the victim (CZ); but it is not clear exactly what this discretion entails.

Much more contentious is the question whether 'a life of crime' should also result in the refusal or reduction of a claim where the injury is wholly unconnected with that life. Here the European Commission's minimum standards are silent, although it is clear from its language that Article 7 is not to be read as extending to cases of this sort. Here only six of 24 respondents said 'yes' to the question: 'does your scheme provide that a claimant who has a criminal record may be refused compensation or receive a reduced amount?'

[This interpretation is supported by the Comments, which characterise Article 7 as reflecting the notion of contributory negligence, a basic principle of tort law that depends on causation. By contrast paragraph 3 of Article 8 of the Council of Europe's Convention provides that 'compensation may also be reduced or refused if an award or a full award would be contrary to a sense of justice or to public policy (ordre public)'. Here, the Survey found a very high degree of agreement on the answer to question 28: 'does your scheme provide that a claimant who has a criminal record may be refused compensation or receive a reduced amount?' Only six of 24 respondents said 'yes' (BG, EE, IE, MT, RO and UK). Although in response to question 26 one respondent had used the phrase 'ordre public' as a criterion (ES5), it was not repeated in that Member State's negative answer to question 28 (BE, CZ, DK, DE, ES5, ES17, FR, CY, LV, LU, HU, NL, AT, PL, PT, SI, SK, FI and SE).]

I have spent some time on this point because I think it illustrates very well the practical implications of labelling process, when translated into legal provision and hence into the allocation of public money. Of the 24 Member States who responded to the questions concerning delinquent victims, a minority (six) would withhold the label where the claimant's biography included a criminal history. Such victims are not 'blameless': 'blame' in this context does not refer to a person's actions in respect of the criminal injury, but to his moral worth as a person who should properly be the beneficiary of public money.

This disorienting condition is one of the touchstones of the British Scheme, for example, which is to compensate only the 'innocent' victim of crime. The Home Office recognises that 'opinions are sharply divided' between those who believe that although the conviction is unspent, the offender's sentence has been served, and those who consider it unacceptable that claimants with unspent convictions for serious offences

should be compensated by the taxpayer (Home Office, 2005, 21). This is my point: to say that a harmed person is a victim carries with it the legitimate expectation that resources, public funds in this case, are properly allocated to him.

By contrast, 21 of 23 respondents would, for the purposes of awarding compensation, withhold the label from those who were in some way causally responsible for their injuries. But we may be equally sure that many of these 'non-victims' would assuredly be counted as victims for the purpose of the prosecution and sentencing of their assailants (aggravating features; though the scope of who may be a 'victim' for sentencing purposes may be unclear (Nash, 2008)). This reinforces the observation that 'being a victim' is contingent on the context in which the label is used, a harmed person may be a victim for one purpose but not for another.

4 Developing the Analysis

The analysis I have rehearsed here of course only scratches the surface of the components that comprise the social process by which the deserving and the undeserving may be differentiated in any case, and, as just noted, differently for different purposes. Nor was I alone in thinking that victimology as it had developed through what were then called its 'founders' was limited in both scope and intellectual coherence, what Howard Becker called 'the lunatic fringe of criminology'. There were and are many other standpoints from which it is possible to develop the analysis; for example, radical / critical victimology, feminist, routine activities analysis, and post-modern (an apparent desire to self-label in an uncertain and anxious world). But my own sense is that the underlying approach holds good, whatever the factors are that contribute to the dynamic that comprises the ascription of the label.

[See (eg Richardson and May 1999 on the social construction of 'deserving' victims of sexual violence), (Spalek 2006, Mawby and Walklate 1994), feminist (Walklate 2004, Grady 2002), routine activities and situation-oriented (Rock 2002), and post-modern (an apparent desire to self-label in an uncertain and anxious world, Bauman 2004, Spalek 2006). These and many other critiques do not however preclude a continuing desire to make 'victimology' a credible social science (O'Connell 2008). A particularly evocative illustration is the treatment of the female victims of the multiple murderers, Fred and Rose West, as in some instances blameless and in others at least contributing to their fate (Winter, 2002).]

5 A Critique

Allowing, as I have argued, that the parameters that influence what harmed persons we shall call victims and thus accept as having legitimate calls upon our resources are fluid and uncertain, we also need to recognise the implications of yet broader victim paradigms. It may be observed that those whom I have identified here as possibly qualifying for victim status are those who suffer criminal injuries to the person. This ignores, which I accept, but there are limits to how much can be included in a short presentation that is dealing with the concept of crime victims, the victims of offences other than personal crime.

Those defrauded by Bernard Madoff's pyramid schemes may well deserve the label, as may the thousands of savers and pensioners whose investments and retirement funds have been prejudiced by the banking sector's mismanagement. Nor have I said anything of the victims of racial, religious or gender discrimination (eg, as immigrants: special issue of the IRV, Erez and McDonald (2007)), or of natural disasters such as earthquakes or large scale flooding. Nor yet have I said anything about other sentient beings whose suffering some may regard as qualifying for victim status: animals used for testing cosmetics or in drug trials, or being hunted as sport, for example. And is the planet a 'victim' of man's avarice or at best lack of care for its future?

I choose the last example in part because the natural world is indeed nowadays and in serious conversation between grown-ups sometimes spoken of as a victim of man's exploitation of the world's natural resources. But I also choose it for another purpose, which is to ask whether this promiscuous use of the word both devalues its use when applied to human suffering and raises expectations about benign intervention that cannot be met (Spalek 2006). We do not need to say that the destruction of the rainforests or the consequences of over-fishing in the North Sea makes victims of trees or cod in order to be critical of the activities that cause these consequences. Nor do we need to do so in order to agree (though this is plainly politically and commercially highly contentious) that limits / quotas ought to be imposed and enforced.

Given the central issues concerning complexity and sensitivity of the concept of 'victim' we ought (because calling someone a victim – or not – is a normative exercise) to take care how we use it and in what contexts. I would like to focus briefly on an interesting critique that has emerged of late. This critique argues that the promiscuous use of 'being a victim' or the status of 'victimhood' is at best enfeebling and at worst a cynical manipulation in which persons who should properly be regarded as undeserving nevertheless obtain access to those resources that have been set aside for deserving victims,

I will use two examples to illustrate this message.

If you google the phrase 'we are all victims now' you will come to the Civitas website, a UK based right wing political think-tank. It provides a link to a book by David Green, *We're (Nearly) All Victims Now! How political correctness is undermining our liberal culture*. He argues that modern liberal democracies have stripped individuals of their own sense of self-worth and self-reliance. They have created a world in which there are no accidents but that all harms that befall us are someone else's fault, and therefore we are all entitled to compensation in some form. 'Group victimhood is not compatible with our heritage of liberal democracy in three particular ways: it is inconsistent with the moral equality that underpins liberalism; it weakens our democratic culture; and it undermines legal equality.'

A couple of extracts from a book published under its imprint will give the flavour: David Green, *We're (Nearly) All Victims Now! How political correctness is undermining our liberal culture*

To be a victim is to be harmed by an external event or oppressed by someone else, things that most people avoid wherever possible. Yet a striking feature of modern Britain is that many people want to be classified as victims. They do so because of the advantages it brings. Victimhood makes it possible to demand special protection in the workplace not available to other employees. It makes it possible to benefit from quotas, like the targets that require government departments to ensure that a defined percentage of public servants are from ethnic minorities. And it may be possible to demand that police powers are used against people who criticise you.

The word victim still retains its old meaning, and victims still inspire ordinary sympathy from kindly people. But today to be classified as a victim is to be given a special political status, which has no necessary connection with real hardship or actual oppression. Victimhood as a political status is best understood as the outcome of a political strategy by some groups aimed at gaining preferential treatment. In free societies groups often organise to gain advantages for themselves, but the increase in the number and power of groups seeking politically mandated victimhood raises some deeper questions, as subsequent chapters will explain. Group victimhood is not compatible with our heritage of liberal democracy in three particular ways: it is inconsistent with the moral equality that underpins liberalism; it weakens our democratic culture; and it undermines legal equality.

I also googled 'victimhood' and like 'we're all victims now' that yielded dozens of hits. Green's book adopts a clear argument, that 'victimhood' generates unwanted social consequences in a liberal democracy, and in pursuit of that argument aims to present a serious defence.

The second example has no pretence to any form of political analysis. If you google 'victimhood' you will find an item in which under the sobriquet, Dr Sanity, the following appears:

"A SHORT COURSE ON HOW TO BE A VICTIM

Chapter I: THE ADVANTAGES OF VICTIMHOOD

This brief guide is for those searching for an expedited pathway into the exalted status of Victimhood. Becoming a victim is an advantageous state of being in many ways, several of which are

You are not responsible for what happened to you

You are always morally right

You are not accountable to anyone for anything

You are forever entitled to sympathy

You are always justified in feeling moral indignation for being wronged

You never have to be responsible again for anything.'

The badge of victimhood must be "earned" (ha ha, just kidding!) by one of two methods: (1) Membership in a special "victim" class; or (2) having something bad actually happen to you. Method 1 is definitely superior in every way since it eliminates the need for something bad to actually happen to you (as long as it once happened to someone like you--you are set); thus this method is preferable and automatically puts all sorts of celebrities and famous people on your side."

And in the same vein for some pages further. For our purposes the interesting point lies not in the political stance or the facetiousness of the second example, but in the critique that 'victimhood' is a status which anyone who senses (self-labels her/himself) some social or other disadvantage can claim, and in respect of which no critical assessment is made. Whatever one thinks of them, these extracts implicitly ask a serious question: can there be / should there be any limits to

the kinds of subjects (persons / animals (warm or cold blooded) / living / inanimate things)

or harms (bodily / mental / physical / economic / aesthetic)

sustained directly or indirectly (relatives / viewers of those harms)

at the hands of other persons (or by natural events)

that might qualify as 'victims'? And if so, what might be the criteria by which those limits are determined?

We may acknowledge that as all of this is socially contingent and context specific there will be no definitive answer in the sense of agreement on objective criteria for inclusion in or exclusion from the status in any case. But that does not mean that we should not seek to explore / ascertain the variables that do contribute to its use, not least to tease out those variables that might be objectionable or contentious. And another reason is, as I have said, is that these determinations have a resource impact in the real world.

This and the other points that may seriously be drawn from the examples I have given are neatly summarised in a review of a book by Alyson Cole, *The Cult of True Victimhood: From the War on Welfare to the War on Terror* (2006, Stanford UP). The reviewer, Anna Kirkland, writes

The book reminds those on the political left why [their] efforts of the 1990s [to recognise new classes of 'victim'] were so easily mocked: because describing victimisation is so often tied to a group identity and because it makes demands for redress. These roots and remedies are typically regarded as contemptible in a political culture that valorises 'up by the bootstraps' individualism ...

Let us take an example from the research on Directive 2001/80. Should, for example, a victim compensation scheme provide compensation to the dependants of homicide victims? In the EC research we explored (point 5) the question whether schemes provided compensation for the dependants of homicide victims. We identified two heads of compensation. The first, typically called 'bereavement', comprises simply a conventional sum of money that recognises the loss of the family member. (I leave aside the obvious problem of quantifying in exact monetary terms the 'value' of the loss to the dependants of their relative's relationship with them.) But of 25 Member States only two did not provide such an award. Such awards tend to be set at a relatively low level.

The second concerns loss of dependency; that is, a sum that is calculated on the basis of the deceased's actual contribution to the family, which in the case of a single income may be very substantial. Fifteen of those Member States' schemes that provide bereavement awards also compensate for loss of dependency but nine do not. We did not explore this further, but clearly the resource implications for public funds of the inclusion of this head of compensation can be significant.

6 Conclusions

So, what do I conclude? The questions implicit in the 'victimhood' critique are important for the following reasons:

1. that to call someone a victim is to make a statement about our moral /ethical view of the world in which the harm was sustained
2. that we would not normally use the label where the harm is trivial or fanciful because that devalues its use where we wish to regard persons who have been raped or killed or injured in ethnic cleansing as victims (eg, Africa Report N°112 June 2006 on rape as an instrument of war)
3. that the use of the label carries with it a bundle of expectations that to a greater or lesser degree draw upon our private and public resources
4. that the larger the number of persons included in (1) the higher the level of expectations under (3) and therefore, other things being equal, the fewer persons in (3) whose expectations will be met
5. that the larger the number of persons included in (1) the more likely it is that we will take our eye off one set of victims in favour of a more clamorous or better organised group (I have in mind here the victims of the 7 July 2005 London bombings whose claims that their applications be prioritised because they were victims of terrorism meant that earlier outstanding claims having similar impact on the applicants were displaced; Wessely 2005, Miers 2006)
6. that the larger the number of persons included in (1) the more likely it is that our use of the word will be devalued (I have in mind here the indiscriminate use of restorative justice as a panacea: see the editorial drive in Handbook of Restorative Justice: A Global Perspective Edited by Dennis Sullivan and Larry Tift (2006), and
7. that earnest and serious efforts to address victimisation will subverted by the kind of political agenda exemplified by 'we are all victims now'.

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Discussing the Concept of Victims of Crime Today

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1. Introduction: Victims, victimization and crime policies

The relationship between criminal victimization and access to justice is a product of the rise of the modern state, formalized justice systems and the monopoly of power which effectively excludes victims (and the public) from taking justice in their own hands. The rise of the modern state has brought complete disempowerment not only of individual victims but also social groups and society at large. The delivery of justice is entrusted solely to the institutions of criminal justice. The modern state and modern criminal justice systems pursue with criminal punishment their own agenda. This agenda is dominated by the goal of re-enforcing and stabilizing norms. In the words of Guenther Jakobs it is the pursuit of positive general prevention which ultimately justifies criminal law and punishment⁵⁷. Nils Christie once has described this process as a process of disempowering victims and communities. He has analogized the process of disempowerment to a “theft” of conflicts⁵⁸. Thus, he has created an image which has become a significant element in the justificatory systems underlying the movements of abolitionism and restorative justice. However, the rise of the modern state comes also with a significant advantage for victims (and communities respectively those social groups to which victims belong)⁵⁹. Victims do not have to pursue justice at their own costs and they are not subject to the risk of getting involved in lasting conflicts over the question who is right and who is wrong (in assuming that a crime has occurred and someone has become the victim of such criminal offence)⁶⁰.

While the first victimization surveys addressed the victim as a most important source of knowledge about crime and its outstanding role in the initiation of the criminal process (through complaints), the 1980ies and 1990ies brought a major change. Crime victims (and criminal victimization) rapidly have moved into the centre of political and legal attention. On the one hand this is due to the emergence of high crime societies that demonstrate the failure of the promise of the nation state to protect citizens effectively against criminal acts of their fellow citizens. Criminal victimization today has become a quite normal event in modern societies. According to the latest European crime survey some 15% of European Union citizens fall victim to a selection of criminal offences each year⁶¹. Citizens evidently do not receive the promised safety in exchange for accepting the monopoly of power nor do they perceive the criminal justice system to treat crime victims well⁶². The failure to protect has to be compensated. On the other hand David Garland has described the way crime victims are accommodated by crime policies as a significant element in a new culture of social control

⁵⁷ Jakobs, G.: Schuld und Prävention. Tübingen 1976.

⁵⁸ Christie, N.: Grenzen des Leids. Münster: Votum-Verlag 1995.

⁵⁹ v. Trotha, T.: Limits to Pain. Diskussionsbeitrag zu einer Abhandlung von Nils Christie. Kriminologisches Journal 15 (1983), pp. 34-53.

⁶⁰ Spittler, G.: Streitregelung im Schatten des Leviathan. Eine Darstellung und Kritik rechtsethnologischer Untersuchungen. Zeitschrift für Rechtssoziologie 1(1980), pp. 4-32; Brunner, O.: Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter. Darmstadt: Wissenschaftliche Buchgesellschaft 1984.

⁶¹ Gallup Europe: The Burden of Crime in the EU Research Report: A Comparative Analysis of the European Crime and Safety Survey (EU ICS) 2005. Brüssel 2007.

⁶² Töyrä, A., Wigerholt, J.: The Swedish Crime Survey 2007. Victimization, fear of crime and public confidence in the criminal justice system. Stockholm 2008, pp. 23-24.

⁶³. Crime policies today come also as policies designed to relieve crime victims from some sort of hardship and in particular they are geared toward protecting potential crime victims from risks and dangers that lie ahead of them. New statutes are named after those victims whose cases ranked prominently in the media and that were eventually used in justifying the making of new statutes. Risk orientation points to still another question, the question of access to safety (or security). The question of whether there exists a right to safety or even a right to feel safe continues to trigger debates which essentially do not address crime victims needs but center around the creation of new police or court powers.

The victim perspective at large over the last decades has led to the creation and implementation of international standards and national legislation that are protective as regards possible adverse impacts of criminal proceedings and the threat of retaliation and supportive as regards compensation of material and immaterial losses caused by the victimizing event ⁶⁴.

Discourses around crime victims and access to justice may also be seen as indicators of basic changes in the concept of punishment. The theory of modern punishment was based upon the assumption that the process of punishment should be free from emotions and be based on rational considerations only. Punishment therefore was placed behind curtains, it was completely hidden from the public and entrusted to well trained professionals who pursue rational goals and seek to prevent relapse into crime. Today, we observe a move towards bringing the public back into the process of punishment. This move recently was described in a publication with the title "The Return of the Wheelbarrow Man – Or the Arrival of the Postmodern Penalty" ⁶⁵ placing the focus on various phenomenon like "chaingangs", "shaming practices", "sexual offender notification" and the like. Such phenomenon evidently reflect characteristics of the premodern penalty. Changes become visible in victim legislation in death penalty retaining countries which allows relatives of murder victims to watch the execution of a murderer. It can be noticed in the new concern for the victim of crime which is at the same time a new concern for the seriousness of the offence. This is a move away from individual prevention back to exerting just punishment, to applying pain and stigma as a response to the crime. The new punitiveness which is diagnosed today in many countries is certainly also explained by a new view of punishment emphasizing emotional and value-reinforcing, in general expressive functions of the criminal penalty. The crime victim here serves as an important justificatory element. The suffering of the victim pushes at the same time for retaliation and for effective incapacitation which will prevent such suffering in the future.

2. Analytical and theoretical perspectives

There are different angles from which the relationship between criminal victimization and access to justice can be analyzed.

Crime victims, access to justice, restorative justice, victim-offender-reconciliation and the return of customary law

The concern for crime victims has encouraged attempts to integrate victim policies with restorative justice approaches, victim-offender-reconciliation and – in some world regions – with traditional justice approaches,

⁶³ Garland, D.: *The Culture of Control. Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press 2001, p. 143.

⁶⁴ Jung, H.: *Zur Renaissance des Opfers - ein Lehrstück kriminalpolitischer Zeitgeschichte*. Zeitschrift für Rechtspolitik 33(2000), pp. 159-163; Council of Europe (Ed.): *Victims – Support and assistance*. Strasbourg: Council of Europe 2006.

⁶⁵ Pratt, J.: *The Return of the Wheelbarrow Men; or, the Arrival of Postmodern Penalty?* BritJCrIm 40(2000), pp. 127-145.

customary law or informal justice ⁶⁶. It is in particular here where the emphasis is laid on re-empowering victims and the community and to endorse theories of justice which are focused on restitution and mediation. However, it is clear that traditional systems of justice bring with them a multitude of problems ⁶⁷. Equality, fairness of procedures, transparency are at risk in many traditional concepts of justice, which inherently are based on pre-modern ways of generating solidarity and social integration ⁶⁸. Moreover, traditional systems of justice are dependent on social structures and social constraints that in modern societies cannot be found anymore. Victim-offender-reconciliation schemes and other ways of responding to crime and victimization function properly only in the “shadow” of criminal law and criminal punishment ⁶⁹.

The victims needs approach

The dominant perspective today certainly concerns the “victims needs” approach. The identification of legitimate needs (or interests) of crime victims is rarely based on empirical research but is driven by activities of various actors among them social services and victim organizations. A most prominent force behind the shift toward victim needs is a growing service orientation in criminal justice agencies which is associated with problems of justification of criminal law in high crime societies (where the state evidently is not capable to prevent crime). It expresses for example in Europe also the political will to protect and to draw the victim under the umbrella of the welfare state ⁷⁰.

Interest and value conflicts

Another fairly well developed analytical perspective is interested in identifying areas of interest conflicts and ways of balancing such interest (and value) conflicts. Crime victims interests not necessarily clash with interests of the perpetrator or those of the suspect, accused and convicted offender. This is underlined for example by the Council of Europe Recommendations (No. R (85) 11) on the Position of the Victim in the Framework of Criminal Law and Procedure. Here, it is held (like it is done in many other regional and international documents), that measures to protect and to assist the crime victim need not necessarily conflict with other objectives of criminal law and procedure, such as the reinforcement of social norms and the rehabilitation of offenders, but may in fact assist in their achievement and in an eventual reconciliation between the victim and the offender. But, there is ample evidence that interest conflicts may arise in various stages of criminal proceedings when the crime victims needs are seriously considered and implemented.

Prominent examples concern non-prosecution or diversion policies that have been implemented with a view of protecting (in particular young) offenders against the stigma attached to being tried in public and systems of juvenile justice justified essentially with education, rehabilitation and re-integration. In many justice systems

⁶⁶ The European Forum for Victim-Offender Mediation and Restorative Justice (ed.): *Victim-Offender Mediation in Europe. Making Restorative Justice Work*. Leuven: Leuven University Press 2000; see for example Wardak, A.: *Building a post-war justice system in Afghanistan*. *Crime, Law & Social Change* 41(2004), pp. 319-341.

⁶⁷ Albrecht, H.-J.: *Conflict Perspectives: Dealing with Wrongs in the Middle East*. In: Albrecht, H.-J., Simon, J.-M., Rezaei, H., Rohne, H.-C., Kiza, E. (eds.): *Conflicts and Conflict Resolution in Middle Eastern Societies – Between Tradition and Modernity*. Schriftenreihe des Max-Planck-Instituts für ausländisches und internationales Strafrecht. Interdisziplinäre Forschungsberichte aus Strafrecht und Kriminologie I 13. Duncker & Humblot. Berlin 2006, pp. 1-12.

⁶⁸ Miller, L., Perito, R.: *Establishing the Rule of Law in Afghanistan*. United States Institute of Peace. Washington 2004.

⁶⁹ Spittler, G.: *Streitregelung im Schatten des Leviathan. Eine Darstellung und Kritik rechtsethnologischer Untersuchungen*. *Zeitschrift für Rechtssoziologie* 1(1980), pp. 4-32.

⁷⁰ Wergens, A.: *Crime victims in the European Union*. *Brottsoffermyndigheten*, Umeå 2000.

victims of crime do not have a voice in the process of deciding over non-prosecution or diversion ⁷¹; some juvenile justice laws suspend the rights available to victims in adult criminal justice for the sake of the best interest of the (criminal) child. The protection of vulnerable witness-victims through video and closed circuit tv links interferes with the right of the accused to be confronted with a witness and to have him or her cross-examined in a public trial ⁷². The most recent interest conflict emerged from sex offender legislation and is visible in the rapid spread of so called sex offender notification laws which give access to sex offenders' personal data not only to victims but to all (potential victims). Here, it is the right to privacy and human dignity of parolees and ex-convicts and their exposure to social stigma and informal sanctions that are weighed against the protection of (potential) victims of sexual crime ⁷³.

Victims and human rights

From a legal perspective of course it is interesting to see whether and to what extent human or basic civil rights demand for the recognition of victims interests in and out of the criminal process and create an obligation to create legislation catering to the needs and interests of crime victims. Of course, treatment of crime victims (and witnesses) must be respectful of the basic rights of human dignity and privacy during interrogations or cross-examinations. Most significant is certainly also the move toward seeing for example human trafficking not merely as a law enforcement problem and being linked to organized crime but to understand human trafficking as a serious violation of human rights ⁷⁴. It is emphasized that the problems of slavery and slave-labour remain unresolved despite the proclamation in the Universal Declaration of Human Rights (1948) that "no-one shall be held in slavery and servitude...". With that, human trafficking is recognized also as an eminent issue as regards protection of victims and access to justice ⁷⁵.

Trafficking victims may serve then to underline that the topic of victims and access to justice is linked to various other policy issues. Victims of human trafficking for example find themselves in a complicated web of rules, practices and interests shaped by historical developments, moral judgements and highly sensitive political issues such as organized crime, (illegal) immigration, youth welfare and protection, labour market problems, violence against women, prostitution, pornography and the sex industry. Perspectives of law enforcement, immigration control, anti-prostitution movements, victim support and assistance may result in conflicts when implemented and may trigger the question of how these conflicting perspectives and interests can be accommodated. The course of the debate on trafficking in humans and the concerns raised point to the assessment that the law enforcement perspective prevails in many situations and that the interests of victims are sidelined or simply used in furthering the interests of law enforcement ⁷⁶.

⁷¹ Albrecht, H.-J.: Simplification of Criminal Procedure: Settlements out of Court - A Comparative Study of European Criminal Justice Systems. [South African Law Commission, Research Paper 19](#). Pretoria 2001.

⁷² Albrecht, H.-J.: Kindliche Opferzeugen im Strafverfahren. In: Vom Umgang der Justiz mit Minderjährigen. Schriftenreihe Familie und Recht. Bd. 13. Hrsg. L. Salgo. Neuwied 1995, 3-30

⁷³ For a short overview see Maguire, M., Kemshall, H., Noaks, L., Wincup, E., Sharpe, K.: Risk Management of Sexual and Violent Offenders: The work of Public Protection Panels. Police Research Series, Paper 139, London 2001.

⁷⁴ Berlin Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted During the Eleventh Annual Session Berlin, 10 July 2002, p. 22.

⁷⁵ Albrecht, H.-J.: Trafficking in Humans and Human Rights. In: Parmentier, S., Weitekamp, E. G., Elsevier, M. (eds.): Crime and Human Rights. JAI Press, Amsterdam et al. 2007, pp. 39-71.

⁷⁶ Herz, A.: Strafverfolgung von Menschenhandel. Berlin 2005.

Monitoring implementation of victim policies

Finally, an implementation and evaluation perspective draws the attention to the question of how policies and laws are applied in everyday practice and what effects of such implementation can be observed. Evaluation of victim support legislation is of utmost import as its introduction is based on the presumption that such legislation meets the requirements of a proportionality test which ultimately demands that the positive results of legislation in terms of effectively providing for access to justice for victims outweigh the losses occurring on the side of the defendant in criminal proceedings.

When looking at crime and victim policies we see a re-arrangement of responsibilities and a re-weighing of interests considered in criminal proceedings. Such re-arrangements result in a new architecture of criminal law and the criminal process.

3. Crime victims and access to justice in international policy making

Over the past decades access to justice for crime victims has been on the agenda of many national parliaments and international bodies. International and regional documents and legal instruments demonstrate the rapid pace of a crime victim friendly policy and its implementation. Most recently the creation of the “Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad” ⁷⁷ was a successful step in formulating general guidelines for national parliaments and justice systems.

The United Nations have started to address the needs of crime victims in the first half of the 1980ies. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the General Assembly resolution 40/34 of 29 November 1985. Here, for the first time the particular relevance of crime victims and the need to create legislation that facilitates access to justice not only for crime victims but also for those who have been victimized by the abuse of power have been recognized on the international level. In 1999 a “Guide for Policy Makers and the Handbook on Justice for Victims” has been approved. The Statute of Rome in 1999 that establishes the International Criminal Court (and the Rules of Procedure and Evidence) deal with victims of crime as does the Palermo Convention on Transnational Organized Crime in 2000 and its optional protocol in 2002 on trafficking which includes specific sections for victims. ECOSOC has adopted in 2002 Guidelines on Restorative Justice, in 2002 crime prevention guidelines and in 2005 the Guidelines for Child Victims and Witnesses. The General Assembly has issued Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law in 2005. The United Nations Draft Convention on Justice and Support for Victims of Crime and Abuse of Power (14 November 2006) summarizes victim related criminal justice standards with demanding for

- a. Procedural safeguards as regards confidentiality of proceedings and respect for privacy of the victim,
- b. The right of information on the course of criminal or administrative proceedings as well as rights of victims,
- c. Comprehensive rights to compensation,
- d. (Short, medium and long term) assistance in coping with adverse effects of victimization,
- e. Effective protection of victims from the risk of retaliation.

⁷⁷ Ministerio Público de la Defensa: Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad. Buenos Aires 2008.

Article 6 of the Protocol on trafficking Transnational Crime Convention 2000, although emphasizing the creation of criminal trafficking law and law enforcement, deals also with assistance to and protection of victims of trafficking. The privacy and identity of victims of trafficking in persons should be protected by making legal proceedings relating to trafficking confidential. Measures shall be implemented that provide information on relevant court and administrative proceedings. The physical, psychological and social recovery of victims of trafficking in persons should be considered. Appropriate housing, counseling and information, in particular as regards legal rights of victims shall be provided taking into account age, gender and special needs of victims of trafficking. Compensation issues are addressed as are questions of immigration laws, in particular as regards permission to remain in the territory of the receiving state. Article 8 then points to the relationship between trafficking and immigration with regulating repatriation issues, among them questions of verification of nationality and issuance of travel documents.

The Council of Europe has addressed the issue of compensation to crime victims from public funds already in the early 1970ies, eventually leading to the establishment of the European Convention on the Compensation of Victims of Violent Crimes in 1983 ⁷⁸. The Convention entered into force 1988. The aims of the Convention are to introduce or develop schemes for compensation to crime victims and to establish minimum provisions for compensation of material and immaterial losses. The Convention states that compensation shall be paid by the state on whose territory the crime was committed to nationals of the states party to the Convention as well as to nationals of all Member States of the Council of Europe who are permanent residents in the state on whose territory the crime was committed. Regarding eligibility, those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence as well as the dependents of persons who have died as a result of such a crime shall be eligible for compensation. This shall apply also if the offender cannot be prosecuted or punished. Compensation shall cover, at least, loss of earnings, medical and hospitalisation expenses and funeral expenses and, as regards dependants, loss of maintenance. Compensation may be made subsidiary to compensation obtained by the victim from any other source. The Convention obliges the Contracting States to designate a central authority to receive and take action on requests for assistance from any other Party in connection with the matters covered by the Convention. The Council of Europe then issued Recommendations on Assistance to Victims of Persecution and the Prevention of Persecution on 17 September 1987.

Recently the Council of Europe issued guidelines on the Protection of Victims of Terrorist Acts ⁷⁹. Herewith, it was recognised that the suffering of victims of terrorist acts deserves national and international solidarity and support. The guidelines underline the states' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist violence, in particular the right to life and thus points also to the European Convention on Human Rights as well as decisions of the European Court on Human Rights holding that states are under a strict duty to implement policies devised to provide for effective protection of human life ⁸⁰. According to the guidelines states should ensure that persons who have suffered physical or psychological harm as a result of terrorist violence as well as under certain circumstances close relatives can benefit from the services and measures prescribed by these guidelines. A couple of principles are elaborated in the guidelines which reflect fairly well and consistently those principles which have been developed for ordinary victims (of violence). When looking into the victim of terrorist approach we find the principle that the granting of services and support should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act and the principle of respect for the dignity, private and family life of victims of terrorism which should be also protected against intrusive media practices.

⁷⁸ OJ L 63E, 4.3.1997, p. 2.

⁷⁹ Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies

⁸⁰ Guidelines on the Protection of Victims of Terrorist Acts (Adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies).

The importance of emergency assistance is stressed as well as long-term medical, psychological, social and material assistance. Then, the duty of effective investigation of terrorist acts is highlighted, a duty which is in line with decisions of the European Court on Human Rights as regards protection of human life⁸¹. In case of decisions not to prosecute it is recommended that states give victims the right to have this decision re-examined. Effective access to the law and to justice for victims of terrorist acts should be provided and the position of victims of terrorist acts adequately recognised in criminal proceedings. Fair, appropriate and timely compensation for the damages is mentioned not to be affected by national borders. Material compensation should come with support in order to provide for relief as regards other impacts of terrorist acts. Protection of the right to privacy and family life against too intrusive media practices is demanded for as is protection of witnesses against risks for life and health that can come with testifying in terrorist trials. The latter evidently refers to organized crime legislation where victim and witness protection has been recognised as an important issue. The guidelines then address the need for information to be delivered to victims of terrorist activities and which – along the well known information standards of general victim policies – refer to information on criminal proceedings, victim rights and victim support. The guidelines conclude with urging states to establish specific training programmes for officials dealing with victims of terrorism.

The victims of terrorism guidelines insofar reflect general standards of delivering support and granting compensation to crime victims. With focussing on protection in criminal proceedings, safeguarding privacy, fair and effective compensation (including advance payments), adequate training of law enforcement staff those focal concerns are raised which have been dealt with by partisans of crime victims for the last three decades.

The European Union has dealt with victims of crime in various Green Papers⁸², declarations, framework decisions issued by the European Council and the European Parliament. The attention paid to victims of crime became visible in a Council Joint Action (97/154/JHA) which aims at combating trafficking in human beings and sexual exploitation of children⁸³, in the Vienna Action Plan of the Council and the Commission of 1998 which deals with how to implement with best effects the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (pointing in particular to art. 19 and 51(c) thereof)⁸⁴, in the Commission's communication to the Council, the European Parliament and the Economic and Social Committee which carries the title "Crime Victims in the European Union Reflections on Standards and Action"⁸⁵, in the resolution of 12 December 2000 on the initiative concerning the Council Framework Decision on the standing of victims in criminal procedure⁸⁶ as well as in the final Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings⁸⁷. When dealing with terrorism European Union statements also recognise that victims of terrorism must be taken care of in order to respond effectively to terrorist goals that aim at destroying social solidarity.

The establishment of an area of freedom, security and justice takes account of the needs of crime victims in the European Union. The Vienna Action Plan⁸⁸ of the Council and the Commission, adopted by the Council

⁸¹ European Court on Human Rights 28 March 2000, *Kiliç vs Turkey*; 18 May 2000, *Velikova vs Bulgaria*.

⁸² Commission of the European Communities: Green Paper. Compensation to crime victims (presented by the Commission) Brussels, COM(2001) 536 final, 28.09.2001.

⁸³ ETS No 116.

⁸⁴ OJ C 19E, 23.1.1999, p. 1.

⁸⁵ OJ C 59E, 23.2.2001, p. 5.

⁸⁶ 1 OJ C 232, 17.8.2001, p.36

⁸⁷ OJ L 82, 22.3.2001, p.1.

⁸⁸ OJ C 19, 23.1.1999, p. 1. Point 51 (c).

1998, called for addressing the question of victim support by making a comparative survey of victim compensation schemes and assessing the feasibility of taking action within the EU. The Commission presented a Communication⁸⁹ on crime victims in 1999, covering not only compensation aspects but also other issues that could be addressed to improve the position of crime victims in the EU. The conclusions of the European Council in Tampere 1999 called for the drawing up of minimum standards on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages. It also called for the setting up of national programmes to finance supportive measures, and for effective protection of victims. Since decades the European Parliament has supported firmly improvements of crime victim compensation schemes. The Council adopted a framework decision⁹⁰ on the standing of the victim in criminal proceedings on 15 March 2001. The framework decision, based on title VI of the EU Treaty, includes an obligation for Member States to ensure that crime victims can obtain a decision on compensation from the offender in the course of criminal proceedings. An in-depth study⁹¹ of the position of crime victims in the EU covered, among other aspects, the possibilities for crime victims to receive compensation from the state under the national laws of the Member States. The results of this study have been published as a Green Paper on Compensation of crime victims⁹². Here, it is stated that recognition of crime victims needs and comparable legal regulation are needed in a common space of free movement, justice and security and referred in particular to the principles of non-discrimination and the right to have a fair hearing as well as decisions by the European Court of Justice that provide for certain basic standards⁹³.

The study found out that current victim compensation rules cover in principle three groups: direct and indirect victims as well as third parties (victimized through helping the victim or by official interventions aimed at helping the victim. Most systems cover all crime victims independent of nationality and residence, some requiring reciprocal victim support in case of non-EU citizens. In general a violent and/or intentional crime is required. The type of losses that can be recovered through compensation schemes concern first of all medical expenses, partially also compensation for property losses. Permanent disability is recognised by all member states as a ground for compensation. Quite significant differences can be observed as regards compensation for immaterial damages (pain and suffering). Differences are found also with respect to how the principle of subsidiarity is to be applied. A formal complaint is mostly required to be brought to the competent authorities within a defined, though varying, period of time. Almost all member states allow for advance payments. The basic legitimation for setting up victim compensation legislation throughout the European Union is seen – besides criminal policy rationales – in equity and social solidarity which constitute also the basic principles behind the 1983 European Convention on Compensation of Crime Victims. Other Member States connect the need for state compensation schemes to considerations of criminal policy. While it is recognised that the one primarily responsible for compensation should be the offender it is argued everywhere that most crime victims in fact cannot get compensation from those responsible due to various reasons. The Green Paper draws from that the conclusion that the function of state compensation schemes lies in providing a safety net for victims and it is then not surprising that the general approach adopted optimizes the crime victims' rights on compensation with paying no regard at all at costs and problems coming along with such a re-distribution scheme of funds (that are borne after all by civil society through taxes).

⁸⁹ Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee. Crime victims in the European Union – reflexions on standards and actions. COM(1999) 349 final, 14.7.1999.

⁹⁰ OJ L 82, 22.3.2001, p. 1.

⁹¹ Wergens, A.: Crime victims in the European Union. Brottsoffermyndigheten, Umeå 2000.

⁹² Commission of the European Communities: Green Paper. Compensation to crime victims (presented by the Commission) Brussels, COM(2001) 536 final, 28.09.2001.

⁹³ Case 186/87 Ian William Cowan v. Trésor public [1989] ECR 195; Case of Rolf Gustafson v. Sweden, judgment of 27 May 1997.

The need to adopt a common European Union policy is justified specifically with obstacles stemming from cross border situations and related to information on the possibilities to get state compensation, to make an application for state compensation and to the necessary investigation that must follow the application. Reference is made to judicial cooperation between the Member States for service of documents and for taking of evidence ⁹⁴. A resolution of the European Parliament ⁹⁵ welcomes the Green Paper ⁹⁶ and puts the question of victim compensation and victim support in a perspective that stresses free movement under conditions of security and justice, the heavy toll criminal victimization places on citizens of the EU and the need to recognise indirect victimization.

The Committee on Legal Affairs and the Internal Market for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs has evenly welcomed the Commission's Green Paper on Compensation to crime victims with declaring that the EU should adopt binding Community provisions in order to create a common area of justice for citizens who are the victims of crime. The Committee adopted the view that in order to be complete and efficacious, any such compensation must cover both material and non-material damage and called on the Commission to treat as a main priority the issues relating to time-limits for submission of claims for compensation, procedural guarantees and the introduction of harmonised claim forms in all the Community languages. Furthermore, minimum requirements for subsidiary application of the state's responsibility are demanded for as well as making compensation independent from nationality. Finally, the declaration voices the opinion that a mutual assistance system must apply which compensates the problems crime victims experience in case of cross border victimization.

In line with the preparatory work a Council directive relating to compensation to crime victims was adopted 29 April 2004. This directive shall ensure that by 1 July 2005, each Member State has a national scheme in place which guarantees fair and appropriate compensation to victims of crime. Then, the directive aims at implementing easy access to compensation in practice and regardless of where in the European Union a person becomes the victim of a crime. Implementation of this aim shall be facilitated by creating a system for cooperation between national authorities which should be operational by 1 January 2006.

The approach emerging in particular with the European Union statements and decisions is certainly in line with the traditional concept of a welfare state that tries hard to compensate all the risks individuals are faced with in modern societies and to compensate damages resulting from such risks fully. It goes beyond the conventional welfare approach with pushing compensation towards tort law and a full compensation approach that is normally justified only by a perpetrator being individually responsible for an act that causes damage to another person. Then, this approach is hardly consistent with the fact that the welfare systems in all member states are overburdened and that such systems are cut back in order to allow for new assessments of what should fall within the responsibility of the state and what should fall into the individuals' responsibility. Problems of fraud and exploitation of such compensation schemes are also hardly analyzed.

The statements and declarations consistently refer to solidarity. Solidarity is emphasized in particular with individual victims of terrorist attacks as well as states falling prey to terrorism. In a declaration on Combating Terrorism the European Council responding to the Madrid massacre stresses the need to assist victims of terrorist crimes by way of adopting the Council Directive on compensation to crime victims. The Council demands then that the Commission allocates the funds available in the 2004 budget for supporting victims of

⁹⁴ 21 Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, OJ L 160, 30. 6. 2000, p. 37. Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States of the European Union in the taking of evidence in civil and commercial matters, OJ L 174, 27.6.2001, p. 1.

⁹⁵ European Parliament resolution on the Commission Green Paper on compensation to crime victims (COM(2001) 536) . C5-0016/2002 . 2002/2022(COS))

⁹⁶ OJ C 125E, 27.5.2002, p. 31.

terrorism. What is also mentioned concerns the need of effective protection of witnesses in terrorist cases and indirect victimization in terms of minority communities that are at risk of falling prey to a backlash after a terrorist attack ⁹⁷. In particular the latter should receive thorough attention as the backlash against minority communities evidently is part of terrorist strategies devised to destroy social solidarity and establish a climate of fear, ethnic and religious hate favourable to the spread of violence.

4. Substantive and procedural issues of access to justice for crime victims

4.1 Substantive issues

With the question of access to justice substantive and procedural aspects are raised. From a substantive perspective the question of access to compensation and restitution, however, also the question of access to the process of punishment is relevant. The question of compensation of course is linked to the rules of criminal law that allow the imposition of compensation orders or restitution orders; it is also linked to those rules which explain the relationship between compensation and pecuniary penalties like fines that are collected by the state and which decide on priorities. As a substantial proportion of crime is never solved the question of victims compensation funds, victim support schemes and state compensation is to be addressed in this context, too.

Access to justice may also be conceived as access to punishment and thus extend to the question whether the victim should be entitled to contribute to decisions on how to punish the perpetrator of the crime. Victim-offender-reconciliation practices sometimes come close to punishment. In particular shaming practices and confrontation schemes are based on the assumption that through a process of mediation and reconciliation social stigma and punitive responses may be evoked and further individual deterrence.

A further extension is introduced with approaches that seek to strengthen access to safety through attempts to protect victims from repeat victimization and from repeat offenders. Disclosing information on potential perpetrators (sex offender notification) is justified with the will to prevent sex offenders from relapse into sexual offences. Anti-Stalking legislation is justified with protecting victims from an escalation into violence ⁹⁸. Zero tolerance approaches to family violence seek to interrupt effectively repeat violence against women and children ⁹⁹. We find here symbolic legislation characterized by the promise to reduce risks and with that to reduce fear (or feelings of unsafety).

It is widely accepted today that criminal law must facilitate within the framework of criminal proceedings compensation of crime victims through the offender either by providing for a separate compensation order or by annexing civil compensation proceedings to the criminal process. However, there is less consensus as to the question of what principles should be adopted when it comes to compensation by the state (in case compensation is not available from an offender).

Current compensation legislation can be subdivided into models that

⁹⁷ See also Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001, SN 140/01, p. 4.

⁹⁸ Albrecht, H.-J.: Stalking – Nationale und Internationale Rechtspolitik und Gesetzesentwicklung. *Familie Partnerschaft Recht* 12(2006), pp. 204-208.

⁹⁹ Lindström, P.: Violence against Women in Scandinavia: a Description and Evaluation of two new Laws Aiming to Protect Women. *Journal of Scandinavian Studies in Criminology and Crime Prevention* 5(2004), pp. 220–235.

- tend to provide full compensation (in particular for pain and suffering and with that adopt tort law as a basic approach),

- find a basic legitimization in a social welfare approach which responds to a financial crisis and special psychological and other support needs as a consequence of violence (or other damaging behaviour), is subject fully to the principle of subsidiarity and prevents that the state and society step in to replace an offender who is either not identified, dead or financially not capable to compensate fully the victim.

It seems clear that a full compensation model (following civil tort law) cannot be justified. The full compensation model is based on the concept of punitive damages and with that on blame. Such an approach puts rather pressure on social solidarity because of evident problems of unequal treatment than adding to social integration. The Moscow law suits following the theater siege and (unsuccessfully) claiming millions of US \$ as compensation in a country where the average monthly income does not exceed 200 US\$ demonstrate the type of problems that come with expectations and promises of broad and full compensation.

The process of considering the victim in criminal law tends to provide also access to justice in terms of participation at punishment. Victim offender impact statements, the right to watch the execution of a sentenced offender, parole hearings that include victim statements, sex offender notification laws, the position of the victim as a prosecuting agent with full procedural rights granted in some continental European procedural laws point to a significant shift away from a punishment theory dominated by individual prevention toward a punishment theory based on general prevention. Victim support legislation that provides for aggressive enforcement rules certainly has a large potential, as Schuenemann has pointed out, to back up and to intensify just and desert approaches to punishment ¹⁰⁰.

4.2 Procedural issues

4.2.1 Crime reporting

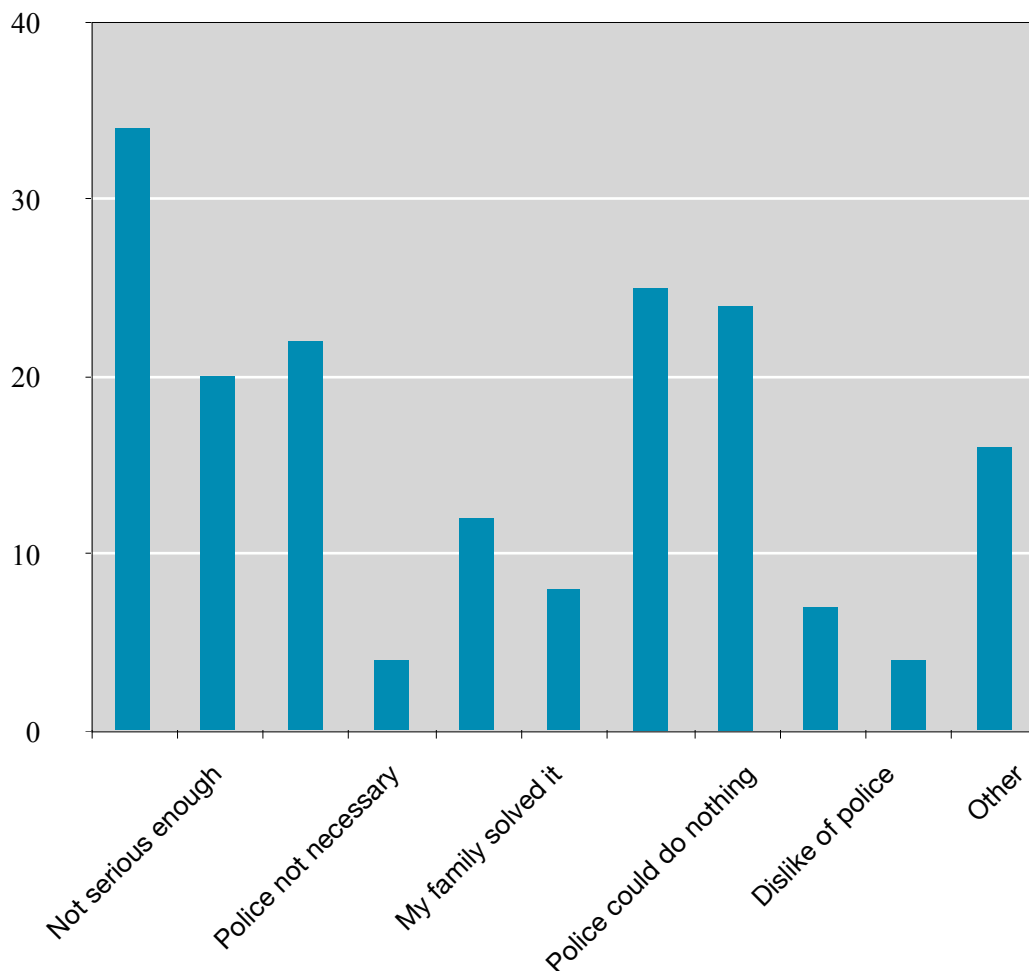
From a procedural perspective the most basic aspect concerns the possibility of bringing complaints against a perpetrator of a crime. This, of course is not so much a problem from the viewpoint of establishing a general right to inform criminal justice authorities about a victimizing act. The question is rather whether (factual) problems exist in laying charges against a perpetrator. Victim surveys have dealt with the question why some victims report the crime to authorities and others not. Findings (for example from the 2005 ECS Survey (Graph 1) demonstrate that most victims do not report because the victimization is felt to be trivial ¹⁰¹. However, some victims evidently refrain from reporting because they fear violent retaliation or other disadvantages that are

¹⁰⁰ Schünemann, B.: Zur Stellung des Opfers im System der Strafrechtspflege. *Neue Zeitschrift für Strafrecht* 6(1986), pp. 193-200

¹⁰¹ Arnold, H.: Kriminelle Viktimisierung und ihre Korrelate. *Zeitschrift für die gesamte Strafrechtswissenschaft* 98(1986), pp. 1014-1058.

likely to be the result of informing authorities about a victimizing event ¹⁰² .

Graph 1: Motives for Not Reporting a Crime % (ECS, average of 20 European countries)



Source: ECS data.

All victims of crime are vulnerable. This has been demonstrated clearly by the fact that they have been victimized. Vulnerability then emerges with the decision to report a crime and with the consequences of initiating criminal proceedings. The decision to report a crime in many instances has adverse effects on the status of a person or the relationship between the perpetrator and the victim; the consequences in terms of serving as a witness in a criminal trial may have an adverse impact, too. But, such adverse effects have to be accepted as they come with obligations established with full citizenship and the need of effectively carrying out criminal proceedings which is again a fundamental element in the rule of law and the protection of basic values and interests. It is only those adverse effects that go beyond what can be expected to be tolerable in a democratic society without compensation.

The access to justice may be for some crime victims barred because of particular vulnerabilities the origins of which may be located in the person of the victim, in particulars of the victimizing event or in legal risks coming with a particular status of the victim. Children, victims of trafficking or victims of sexual offences represent

¹⁰² See also Tarling, R., Dowds, L., Budd, T.: Victim and Witness Intimidation: Findings from the British Crime Survey. Home Office, The Research, Development and Statistics Directorate, London 2000.

such vulnerable victims for which over the last decades particular remedies have been sought ¹⁰³. Their vulnerabilities are due to the status and the particular developmental stage as well as dependencies of a child, the status of an illegal immigrant and the risk of deportation as a consequence of disclosing the status of a victim of trafficking, particular primary and secondary traumatization associated for example with violent sexual crime or with large scale terrorist violence and requiring particular attention.

Particular vulnerabilities may then be due to poverty, the lack of financial resources and social competences.

Access to justice may for some victims be limited because of a credible threat of violent retaliation ¹⁰⁴. Fear of violent retaliation has been reported recently as a major problem affecting particularly disadvantaged neighborhoods ¹⁰⁵. While this problem is certainly explained by the obvious failure of the community to provide for social cohesion and with that for effective informal social control and protection, modern societies have on the one hand lost their capacity of establishing and maintaining effective formal controls and on the other hand have contributed to situations where individuals and social groups are exposed to particular risks.

Different answers to the question of how to accommodate vulnerable victims and how to compensate vulnerabilities have been developed and implemented:

Compensating for factual problems with reporting crime and initiating criminal proceedings

It is in particular in the field of violence against children where already in the 1970ies the problem of reporting of crimes has been recognized. Children are due to their developmental stage and/or due to strong dependencies not in a position to bring complaints against perpetrators of violence or neglect who are closely related to the victim. Compensation is sought with obligations of parents to present the child in regular intervals to medical or social services, obligations of medical doctors, nurses or child institution staff to report suspicion of child maltreatment or neglect ¹⁰⁶.

Neutralizing legal risks

The OECD convention on corruption as well as United Nations and Council of Europe conventions on corruption contain a rule that urges ratifying countries to introduce legislation which reduces the risk of civil and criminal liability linked to providing information which can result in heavy financial losses to a suspect. Encouragement of whistle-blowing seems to become an internationally endorsed policy, especially in the fields of organized and economic crime ¹⁰⁷.

Anti-trafficking policies come with proposals to amend immigration laws in order to allow permits of residence for (foreign) victims of trafficking ¹⁰⁸.

¹⁰³ Kitchen, S., Elliott, R.: Key findings from the Vulnerable Witness Survey. Home Office Research, Development and Statistics Directorate, Findings 147. London 2001.

¹⁰⁴ Tarling, R., Dowds, L., Budd, T.: Victim and Witness Intimidation: Findings from the British Crime Survey. Home Office, The Research, Development and Statistics Directorate, London 2000.

¹⁰⁵ US Atlantic Monthly March 6, 2007: On Baltimore's Mean Streets.

¹⁰⁶ See for example Waldfogel, J.: The Future of Child Protection. Cambridge 1998.

¹⁰⁷ Backes, O., Lindemann, M.: Staatliche organisierte Anonymität als Ermittlungsmethode bei Korruptions- und Wirtschaftsdelikten. Heidelberg 2006.

¹⁰⁸ See in this respect the European Union Council Directive of 29 April 2004 on the short-term residence permit issued to victims of human trafficking and smuggled migrants who co-operate with the competent authorities.

Victim/witness protection schemes

The answer that has been developed in particular in the field of organized crime concerns victim and witness protection schemes which compensate for the exposure to a particular risk that is due to the role of the victim in carrying out of a criminal trial ¹⁰⁹.

Victim/witness protection against traumatization and adverse effects of criminal proceedings

Anti-traumatization policies have during the 1990ies in many countries led to the implementation of legislation that seeks to protect in particular victims of violent sexual crime:

Closed circuit television transmitted testimony during the trial,

the admission of taped victim interrogations,

enforced absence of the accused during the presence of the victim in the trial,

in camera trials,

and a push for guilty pleas (which prevent the need for the victim to testify in an open trial),

are part of victim protection legislation that is based on the assumption that repeated interrogations about a traumatizing event, confrontation with the perpetrator, humiliating cross-examinations and the display of the victims pain and suffering in public must be avoided ¹¹⁰.

The right to a (victim) council

With accepting victims rights in criminal proceedings the question of whether a crime victim should be entitled to legal representation during investigative and trial stages and whether such representation should be based on free legal aid has to be answered. International instruments do not elaborate on this point. However, the principle of social welfare and procedural fairness demand that crime victims are offered an access to legal aid to the extent societies provide such services in general.

4.2.2 Information on the course of criminal proceedings

An evenly basic aspect concerns plain information on the course of criminal proceedings once a criminal complaint has entered the criminal justice system. Such information concerns the initiation of formal proceedings and the outcomes of decision-making ¹¹¹.

¹⁰⁹ Fijnaut, C., Paoli, L. (eds.): *Organised Crime in Europe, Concepts, Patterns and Control Policies in the European Union and Beyond*. Dordrecht 2004; see also Council of Europe Recommendation No. R (85) 11, *On the Position of the Victim in the Framework of Criminal Law and Criminal Procedure*, No.16: "especially when organised crime is involved, the victim and his family should be given effective protection against intimidation and the risk of retaliation by the offender".

¹¹⁰ See Art. 8 §4 of the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

¹¹¹ See Art. 4 of the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings: Right to receive information.

4.2.3 Active participation at criminal proceedings

The procedural aspects then concern the question whether the victim may play an active role in carrying out criminal proceedings. Such an active role may be also in the interest of the rule of law as victim participation may serve as a control in discretionary decision making and add to transparency in the criminal justice process.

An active role of the victim is implemented through the right to be heard before final decisions. Of particular relevance are:

Non-prosecution/diversion decisions,

Victim impact statements,

Participation in parole hearings.

An active role is sometimes accorded through procedural statutes that enable (either at the discretion of the court or as a statutory right of the victim) participation of the victim for the purpose of carrying out proceedings aimed at civil compensation.

Some Continental European procedural laws grant the victim (or relatives of the victim) in certain (serious) crimes the right to participate at the trial with the full rights of a prosecutor (which include the right to examine evidence or to appeal the courts decisions).

4.2.4 Integrating forfeiture and compensation policies and legislation

Access to justice may be facilitated through integrating victim and forfeiture policies. A victim friendly policy of going after the money should widen the scope of grounds that allow for the preliminary and final forfeiture and seizure of the suspects or convicted offenders assets. German criminal procedural law stipulates for example that prosecution services shall inform the (known) victim about seizure of assets or make public seizure of assets in certain cases in order to allow (unknown) victims to enforce their rights to compensation or restitution (§111 e, III, IV German Criminal Procedural Code). German criminal procedural law provides also for the possibility to extend the duration of seizure of assets for another three months in order to allow for victims to initiate compensation procedures (§111 i German Criminal Procedural Code).

5. Implementation of access to justice

There is not much research on how and to what extent victim support and protection policies are implemented. The International Crime Survey carried out in 2005 in European Union member countries for the first time aimed at collecting systematically data on the support victims receive and respective perceptions and attitudes of victims. The results are somewhat sobering. According to the data of the 2005 Crime Survey most victims (who voiced interest in being assisted in the aftermath of a victimizing event) do not receive support by specialized agencies ¹¹². The highest coverage of victims can be observed in the UK, Netherlands, Austria, Denmark and Belgium. Here, between 10 and 16% of victims receive support by specialized victim

¹¹² Gallup Europe: The Burden of Crime in the EU Research Report: A Comparative Analysis of the European Crime and Safety Survey (EU ICS) 2005. Brussel 2007, pp. 76.

assistance agencies. The lowest shares are found in Germany, Hungary, Spain, Greece, Italy and Finland where just between 0,5 and 2% of crime victims report experiences with assistance and support ¹¹³. On the EU average 7% of victims of serious crime received specialized support. In contrast, a significant share of crime victims (who had reported the criminal incidence) expresses the wish of receiving support (some 40%). It is in particular victims of sexual crime who voice the need of support and assistance (70%). Thus, according to the 2005 ECS data compliance with the EU Framework Decision of 2001 seems to be low.

Efforts to improve access to justice for victims have in France resulted in the creation of legislation which provides for a special judge for victims (*juge délégué aux victimes*) ¹¹⁴. The judge for victims is at the same time the chairperson of the Restitution commission and is entrusted the task to facilitate the enforcement of victims rights in criminal proceedings ¹¹⁵.

6. Summary and Conclusions

The issue of access to justice for crime victims fits into various political agendas: access to justice for crime victims may be part of

- a just and desert approach to punishment,
- abolitionist and restorative alternatives to criminal law and punishment,
- a welfare approach to responding to victims of crime.

Access to justice for crime victims evidently may be defined from various perspectives: Access to justice may mean

- to be able to report a crime and to initiate criminal proceedings and a just response to criminal victimization
- to be compensated fairly
- to be treated fairly when contributing in the role of a witness to criminal proceedings.

Access to justice for crime victims should not be merged with approaches that seek access to the application of punishment. Access to justice for crime victims should be confined to a concept of justice that within the framework of the criminal process provides for protection of the victim and the provision of services that aim at reducing the adverse effects of the crime.

A strict victim oriented access policy should be adopted that avoids contamination through other crime policy agendas.

¹¹³ See also van Dijk, J., van Kesteren, J., Smit, P.: Criminal Victimisation in International Perspective. Key Findings from the 2004-2005 ICVS and EU ICS. Den Haag 2007, p. 121.

¹¹⁴ Décret No 2007-1605 du 13 Novembre 2007.

¹¹⁵ Inspection Générale des Services Judiciaires: Rapport. Mission Portant Sur Une Première Evaluation Du Juge Délégué Aux Victimes (JUDEV). Paris, Ministère de Justice 2008.

An access to justice for crime victims' policy must be evidence based and therefore systematic empirical research on the effects of policy implementation must be encouraged.

Victims of Crime: a study of Member State's Legislation, national policies, practices and approaches concerning victims of crime

Andrew Sanders **University of Manchester**

In 2008 the European Commission asked the Centre for the Study of Democracy in Sofia, Bulgaria (including myself as Lead Analyst), to undertake this study of all 27 Member States (MSs). The focus was on how MSs have complied with the Framework Decision of March 2001 (on the standing of victims in criminal proceedings) and the Council Directive 2004/80/EC of 2004 (on compensation of victims). But the brief was also to assess the effectiveness of internal legislation, policies and practices, identify innovative approaches, and see where there are funding needs that might be provided by EU programmes. This could not be done in the depth we would have wished in a project lasting less than 12m with a limited budget, but we obtained interesting results nonetheless. In this presentation I will summarise our findings, highlight some important differences between different MSs, and pose some questions for participants (for example, about how important it is that MSs harmonise these laws, how far laws and practices are congruent, what innovative developments participants know of in their jurisdictions, and where the funding needs are greatest). The project also looked at the role of Victim Support organisations. Some time will be devoted to discussing how well these organisations deliver support 'on the ground', the extent to which they rely (or should rely) on government funding, whether it is best to have one or a variety of organisations, and how the role of VSE might be enhanced.

EU-MIDIS: findings from the FRA's EU-wide survey on minorities' experiences of criminal victimisation

Jo Goodey **Agency for Fundamental Rights**

The European Union Agency for Fundamental Rights (FRA) conducted the first survey of its kind in 2008, in all 27 Member States of the European Union, on selected immigrant and ethnic minorities' experiences of discrimination and criminal victimisation. The survey, EU-MIDIS, which stands for the 'European Union Minorities and Discrimination Survey', interviewed 23,500 people from immigrant and ethnic minority backgrounds throughout the EU, and a further 5,000 people were surveyed from the majority population.

The survey asked respondents about their experiences of discrimination on the basis of their immigrant and ethnic minority background in nine different areas of everyday life, ranging from employment through to gaining access to a shop, and went on to ask about experiences of criminal victimisation in five areas, and whether respondents considered that their experiences of crime were racially motivated. Detailed information was collected about interviewees' experiences of criminal victimisation with respect to the background of perpetrators, where known, and how often victims had experienced certain types of crime in the previous 12 months. The results also provide valuable information about whether respondents' reported their criminal victimisation to the police, and followed this up with detailed questions about reasons for non-reporting. In addition, the survey asked respondents about their contact with the police and whether they considered they were stopped by the police specifically because of their immigrant/ethnic minority background.

To this end EU-MIDIS provides a wealth of data on groups that, to date, have not been included in any EU-wide survey on criminal victimisation.

The position of crime victims in Finland: formal rights for strong victims?

Päivi Honkatukia **National Research Institute of Legal Policy**

The crime victims' formal position has been described as being strong in Finland: complainants have e.g. a right to speak in courts as well as a right to institute criminal proceedings independently from the prosecutor. Measures have also been developed in terms of compensation and legal support for complainants. In practice, however, there seems to exist a tension between the formal and practical position of the Finnish crime victims. Sensitivity towards crime victimisation is a recent issue: services for victims have been developed only during the last 10 years, starting 20 years later than in countries more advanced in this respect.

The Finnish situation is well described by quoting criminologist Jo Goodey (2000, 20) statement on victims' position more generally. She says: "formal legislation [...] is not a guarantee of provision for victims which, in practice, can depend on victim compliance with criminal justice authorities – that is, the victim playing their part in the process as a 'victim citizen'".

The purpose of this presentation is to critically evaluate the possibilities for victims to become "victim citizens" who are able to use their rights. How easy it is for them to access to justice in practice? How do they feel about the treatment they have received when their case has been officially handled? How have the needs of different victims or groups of victims been taken in account?

These questions will be reflected in three ways. Firstly the Finnish situation is examined as based on results of international victimisation survey. Secondly, the organisation of Finnish victim services is presented and some preliminary results from a survey to clients of victim services are presented. Thirdly, the Finnish victim service professionals' views on victims and their diversity are analysed by using the concept of vulnerability.

Finnish victims in the European context

Recent international victimisation surveys have included questions on victim satisfaction with the police and other criminal justice personnel and processes (Goodey 2000, 15; Van Dijk & Groenhuizen 2007). On their basis it is worth noting a couple of interesting trends. Firstly, the reporting rate is rather low in Finland. In an international victimisation survey conducted in 2005 it was asked from victims of five types of serious crimes (theft of motor vehicle, burglary, robbery, threat/assault, sexual offence) whether they had reported their experience to the police. According to the results Finland was placed to number 18 among the 25 EU-countries with the reporting rate of 48 %. In other words, less than a half of the Finnish victims of rather serious offences report the case to the police. The highest rates were found in Austria (70 %) and Belgium (68 %).

Secondly, despite the low reporting rate Finnish victims seem to be rather satisfied in how their complaint has been dealt with by the police. In the above mentioned survey it was asked whether the victims who had been in contact with the police had been satisfied with how the police had dealt with their case. Finnish victims were second after Danish victims: 72 % of them were satisfied (Van Dijk & Groenhuizen 2007, 368-371). This reflects perhaps somewhat the fact that the police as an institution is highly valued in Finland, unlike in many other countries. The police have also recently taken some efforts to increase their sensitivity towards crime victims.

It is also interesting that the most dissatisfied victims can be found in the countries in which victim services are the most advanced. This result can be explained by the raised expectations and knowledge of the victims of their rights. It can also tell about how the police relates to victims in countries with advanced victim services: the police thinks that the victims needs are met when they are referred to a specialised victim services. In countries with less developed victim services, such as Finland, the police might assume more responsibility of the considerate treatment of the victims when there is no service they can be referred to (Van Dijk & Groenhuisen 2007, 371-372).

Thirdly, in the above mentioned international victimisation survey it was asked whether those victims who had wanted to receive specialised services had actually received them. In Finland this share was only 6 %, and it was one of the lowest rates in Europe. The highest rates can be found in countries such as Scotland or Austria, where it is about 40 %. This result can be seen as an indicator of the availability of services. Therefore it seems as if in international comparison there are not many services for victims of crime in Finland. (Van Dijk & Groenhuisen 2007, 373-376)

Victim services in Finland

To some extent the complainant's strong position is a historical relic in Finland. Unlike in many other western countries, in Finland and in Sweden the complainant's right to institute criminal proceedings has not been totally removed, even though it has been narrowed (Nousiainen & Pylkkänen 2001, 173-174). Also during recent decades, measures have been developed to support victims in the criminal process. Police is responsible of preliminary investigation of criminal offences, and prosecutors and district courts of the legal dealing of offences. In addition, the police has been advised to inform victims on legal matters concerning their case and on the available victim services. A rather large proportion of criminal offences are dealt with in the mediation in which the parties discuss offence in the presence volunteer facilitator. During recent years the victim perspective has been more visible in the development of this process.

Legal measures have been developed for victims to have the harm caused by the criminal offence compensated primarily from the perpetrator but also from the state or insurance companies. The state authorities have also a responsibility to provide an interpreter if needed. Moreover, district courts can admit a legal counsel and/or support person for a person who has been a victim of sexual offence, serious violent act, and if the violent act has been committed by a person near by. The commission is paid by the state in these cases. Also the public legal aid offices can admit free or partly free legal aid for those in a disadvantaged economic situation.

Despite these and some other measures, no consistent victim policy has been established in Finland. Therefore, for example in the health care or social services sector crime victims do not have a specific standing. They would therefore need to be able to express their needs when being a health care or social sector customers. Professionals in these sectors are not always aware of the consequences of victimisation. Traumatic dimensions in being a victim of crime are still only partially recognised in professional practices – in health care and social services as well as in the criminal justice system (Ronkainen 2008).

The actual victim services are organised by civic organisations. The main organisation for crime victims is "Victim support Finland". The services are for victims of any crimes, including witnesses and those near-by the victims. The Federation of Mother and Child Homes and Shelters upholds 14 shelters around the Finland (in addition there exist about 20 other shelters in Finland). Moreover, there exist some women-specific services: Tukinainen – Rape Crisis Centre supports women and girls who have experienced sexual abuse or their near-bys. Monika – Multicultural Women's Association in Finland helps girls and women with an immigrant background. National Women's Line in Finland offers national telephone- and Internet-advice as well as peer group activity for women who suffer from violence. The Federation of Mother and Child Homes and Shelters

has also organised services for men in difficult life situations (Men's Centre) and in dealing with their own violence. The shelters work also with children who have been victims of violence or have witnessed violence at home. Different associations have also organised services for different groups (e.g. children and young people, elderly etc.) which are not specifically for crime victims but deal with wider problems and difficult life situations of these groups of people.

Survey to clients of victim services

In my research project I have conducted a survey among the clients of victim support organisations. The aim of the survey was to find out which victims seek for help, what kind of help they expect to receive, and what are their experiences on criminal justice personnel as well as other authorities. The organisations which took part in the survey were the following: Victim Support Finland, The Federation of Mother and Child Homes and Shelters (half of their shelters), Tukinainen – Rape Crisis Centre, Monika – Multicultural Women's Association¹¹⁶. Of the state organisations the national legal aid guidance was included in the survey. The survey was conducted under the two months time in the Spring 2009. During that time each phone contact was counted and if the phone call dealt with experience of being a crime victim, the caller was asked whether s/he could participate in the survey. Majority of responses came from the Victim Support Finland, Rape Crisis Centre and Shelters. With the exception of Monika (n=27), the other organisations there were only handful of responses. Altogether the survey was answered by 202 persons.

I am able to present here only some preliminary observations from the data, not a detailed analysis.

These observations might however shed some light to the organisation of victim services in Finland.

My first "reading" of the data provided me with four observations which I will share with you here.

1) Serious experiences

First of all, the victim services deal with very serious and traumatising experiences.

The questionnaire was answered only by every fourth person who contacted the services. In a quarter of the phone calls that came in during the research period the questionnaire was not proposed because the caller was considered too traumatised. This reflects the fact that the services are often contacted in the context of crisis. In 38 % of the calls the questionnaire was not proposed for some other reason (including consultations from other organisations and authorities). Of those who were asked to participate, 26 % refused (n=62). Reasons for this are not known, but it can be assumed that one of them is the difficult nature of the experience.

Majority of the phone calls were about violence: 50 % dealt with interpersonal violence, and 31 % sexual violence. In Victim support Finland the share of violence was lower, and 10 % of their calls dealt with property offences.

For majority of the victims in question the victimisation had caused serious harm: over 90 % had experienced mental problems because of the experience – particularly fear. 61 % had got physical injuries, almost half (48 %) had visited a doctor and 13 % was hospitalised. In addition, 67 % had experienced economic harm. Majority (61 %) contacted the service to receive help in dealing emotionally with the experience. In addition to this, many wanted to have support in dealing with the case in the criminal process as well as other authorities.

¹¹⁶ Of the associations directed to victims of violence only National Women's Line refused to take part in, as well as some shelters (each of whom decided about the participation independently).

Those people's voices who were considered too traumatised or who refused to answer the questionnaire are not included in the results – if so the picture would probably be even more dismal. Similar observations in terms the dominance of violence with serious consequences have been made in other studies on victim services (Stohr 2005, 395).

2) Those who seek help are not the most marginalised

The age of victims of whom the phone call concerned varied from 4-71; the mean age was 39 and medium age 37. 84 % of the callers were victims themselves, and 11 % were family members (mostly parents). In line with results from some other studies on victim services, persons who contact victims services are mostly women (see also Sims et al. 2005, 375), 17 % of them were men. In rape crisis service the victims had been solely women, while in victim support every fourth of the victims were males (26 %) ¹¹⁷. With the exception of Monika-Association, only a handful of the respondents identified themselves as a member of an ethnic minority. However, 7 % of the respondents felt that they/victim had been targeted because s/he belonged to some minority.

In Finland it seems that those who contact victim support are not extremely isolated or marginalised, unlike in some other countries (see e.g. Sims, Yost & Abbott 2005, 363; Stohr 2005, 392): 42 were currently in the working life, every fourth was a student, 14 % unemployed, 13 % were pensioners. Besides contacts to state services, they seemed to have received informal support: over 90 % had told about the occasion in question to a friend or somebody near by, 29 % to a neighbour; 40 % to a colleague; 10 % had discussed it in the Internet.

3) Not a low-threshold service

The services are not typically the first instance to turn to, at least based on the experiences of those who had responded. Over 90 % of the respondents had been in contact with some authorities because of the case: 70 % had been in contact with the police; 28 % had been in contact with social services; 60 % with health care, 33 % with the mental health services, 26 % with legal aid services.

It seems as if the contact is made while the case is in a pre-trial phase, but also 15 % of the respondents had had their case dealt with in the district court.

4) Critical customers

The respondents of the client survey seemed to be more critical than usually in the victimisation surveys. As I said earlier, the non-response rate was rather high in the survey. However, those who agreed to participate seemed to be particularly motivated to have their views heard: the questionnaires were filled out very well and included wordy comments to the open-ended questions.

It seems that one of the motifs to take part in the survey has been that the respondents had something to say about how they were treated.

Majority of the respondents said that the case had come to the knowledge of the police (66 %), and 8 % contemplated at the time of the phone call whether they will report the case to the police. In 59 % of the cases an official report of an offence was made (n=95).

¹¹⁷ Over time the male contacts to Victim service Finland have increased.

The cases of which an official report was made were in different phases of criminal process: a third was still under police investigation (36 %). A third of the cases were under prosecutor's consideration (or the prosecutor was in the process of taking the case to the court). 20 % of the cases had been dealt with in the court; and in 13 % of the cases the process was still running. There were also cases in which the police had stopped the investigation (16 %) or sent the case to the mediation (6 %). The prosecutor had made a decision of not to prosecute in 9 % of the cases.

As many as 43 % of the respondents were dissatisfied with how their case has been handled by the police. According to responses, the so called procedural justice seems to matter in the respondents evaluations of their satisfaction with the police and other criminal justice professionals. The reasons for dissatisfaction with the police included e.g. lack of sensitivity by the police (being humiliated by the police, being forced to repeat the course of events time after time, lack of support, rudeness etc.), delays in the investigation, not making sufficient efforts to investigate the offences, lack of information. Similar causes of dissatisfaction with the police have been found also in the victimisation surveys (Van Dijk & Groenhuizen 2007, 371-372).

Police is the first and sometimes the last official who encounter the victim. The police is advised to inform the victims of crime of the existing services and the criminal process. Most respondents' cases had been dealt with the police. In that sense it is surprising that only 18 % of the victims stated that they had received the information on the service from the police. As many had been active themselves and had found the service through Internet (20 %).

40 % of those whose case has been with the prosecutor, were dissatisfied with the treatment they had received. Sources of dissatisfaction were similar as to with the police: lack of sensitivity and information of the proceeding of the case. Some were also disappointed that the case did not proceed to the court.

40 % of those whose case was dealt with in the court were dissatisfied (8/20). Sources of dissatisfaction included again e.g. the following aspects of procedural justice: the attitude of the judge (humiliating manner of speaking; being in a hurry), behaviour of the defence lawyer or the victim's own legal assistant; not knowing what was going on

Every fifth of the respondents said that they had had legal assistant in the court, in addition to which some had had an assistant while reporting the case or in police hearing. Almost half of these respondents were dissatisfied with the assistant: they had felt that the legal assistant was not on their side, was not interested in their case, did not have time, were expensive or ineffective.

At the time of the phone call not many of the respondents had had a support person in the criminal process (14 %). However, for many the contact to victim service may have been the first step to get a support person; a trained volunteer by e.g. the Victim Service Finland who will help to get through the process. The support persons included persons were both from the victim service and persons near by: husbands, fathers, friends. Most were satisfied with their support persons.

Expert views on victims and vulnerability

Thus far I have presented views of crime victims who had been customers of victim services in Finland. It is well known that only a minority of all victims ever contact victim services. To present the victims' position in Finland still from another angle I will shortly present an analysis on professional views on victims and their needs.

Victims of crimes are not a unitary group. In some academic writings as well as political documents the concept of vulnerability is used in making visible differences between victims and differently difficult and traumatic consequences of victimisation. It is also pointed out that victims are not equally vulnerable and vulnerability is not equal to risk of victimisation. With the concept of vulnerability I try to evaluate how victims' diversity and diverse needs are understood by Finnish professionals working in this field. My analysis is based thematic interviews of 17 experts who in their daily work encounter crime victims. The sample includes judicial authorities (police, prosecutors, judges, social workers, legal aid counsels) as well as professionals working in victim support organisations (altogether 17 interviews).¹¹⁸

In terms of vulnerability e.g. following questions were analysed: what groups/experiences are identified as being vulnerable? And in what sense? Are there groups who are perhaps excluded?

Due to time limit I can not present here a complete analysis of the interviews, only some main observations. It seems as if the concept of vulnerability is not in everyday use among the professionals, even though it is visible in some political documents as well as in some academic texts also in Finland.

Despite this many interviewees discussed vulnerability with expertise. Vulnerability was understood at least in three ways: firstly it was talked about particularly traumatising offences, secondly about groups of people which were regarded vulnerable due to their societal status, and thirdly it was pointed out by many that individual differences in vulnerability may result from personal traits and life-course. It was also pointed out that these elements often intertwine with each other which makes vulnerability a complex and many-layered phenomenon. The consequences of vulnerability were analysed in differences between people in becoming a victim, in seeking help and in functioning rationally in the criminal process and encounters with other authorities.

In terms of particular offences, violence and especially sexual violence was unanimously regarded traumatic and traumatising experiences. It was understood as serious and humiliating intrusions into intimacy and privacy. Of property crimes burglaries were regarded to include similar traumatising potential. It was pointed out that emotional burden caused to victims reduces the capacity to function in a rational manner. It therefore has consequences to the victim's ability to seek help or to function in the criminal process, act as a "victim citizen". The need for support was recognised, and this is reflected also in the legislation as well as in the client survey results presented earlier.

The strongly shared view on violence as a vulnerable experience may reflect a civilisation process referred to in analyses on the crime victim's emergence in the public and political discussions (e.g. Tham 2001). Violence is not any more tolerated to the same extent as before. Also the increased interest in human rights as well as the activity of women's movement in raising the issue of violence in private sphere has been referred to as reasons behind the increased intolerance towards violence. In some countries, feminist movement has been said to made it easier for other politically weak groups (or their advocates) such as children, elderly people, immigrants, sexual minorities etc., to express their specific vulnerabilities in terms of violence (Tham 2001; Walklate 2007). To some extent this is also the case in Finland, even though the feminist standpoint has not

¹¹⁸ Besides their views on vulnerability the experts were asked to think about the criminal process, its' problems and needs for reforms from the crime victims' point of view.

been as strong and accepted as in some other countries¹¹⁹. Also human rights approach has been emphasised in dealing with violence. In recent years, violence has also been targeted in political programmes.

Towards this background it is understandable that the interviewed experts seemed to be well aware of different societal positions' and groups' vulnerabilities in terms of victimisation of violence, in particular. Children, elderly people, immigrant women, victims of partnership violence (both women and men) were mentioned without hesitation as vulnerable groups. Due to their societal position these groups face different problems in acting as "victim citizens" who know their rights and are able to use them. I will not go deeper into that now.

Along with this tactful and well expressed sensitivity towards various aspects of vulnerability, it seems as if the understanding of vulnerability is also to some extent formed around the idea of pure or innocent victim, or ideal victim – a concept proposed by Nils Christie (1986). The ideal victim is someone who is seen innocent and has not contributed to any way to his/her own victimisation. Perhaps therefore groups, such as young people, immigrants as victims of racism or people living in the margins of society were not as readily mentioned as vulnerable victims as the above mentioned groups.

Unlike children, young people are more often seen as perpetrators rather than victims of crimes. Therefore their vulnerabilities might sometimes remain unnoticed, particularly in the context of peer relations. The same can be said about immigrants in terms of their experiences with racism. This issue has been paid attention to in policy papers and codes of practices, but somehow it seems to be a difficult issue recognise in practice. The legal authorities I interviewed said that they have rarely come across this phenomenon. More often they had encountered immigrants (or rather immigrant men) as offenders. The connection between their criminality and possible victimisation was not made in this context. This connection is also lacking when thinking about different marginalised groups, such as drug users, homeless, poor, criminals etc.

All these groups (young people, immigrants, marginalised people) often experience victimisation and offending as an ongoing process throughout their lives. If this is not taken into account, the understanding of the victimisation process is rather limited. Neither was repeat victimisation often discussed, with the exception of partnership violence. Repeat victimisation is often experienced by "most socially, economically and politically marginalized groups" (Goodey 2000, 25). In other words victim vulnerability was not seen "as a phenomenon of marginalised social groups" (Goodey 2000, 25). (see Goodey 2000, 22-25; Tham 2001).

In the criminological literature this kind of ranking of victims is referred to as the hierarchy of victimisation. At the bottom one can find homeless, substance abusers and other marginalised groups who have perhaps committed crimes themselves. It might be difficult to see them as deserving victims with specific needs and rights. By contrast, it can be thought that criminality is part of their chosen lifestyle. (Walklate 2007d, 28-29)

In the Finnish context in particular, difficulties in recognising these groups' needs as victims of crimes can reflect the current situation of victim services as not mainly the state's responsibility. By contrast, they are organised to a great part by non governmental organisations. The "not ideal victims" do not attract sympathies of the wider audience, it is difficult to identify with their suffering and get funding for them. Another problem is that the third sector is organised mainly as small scale projects which operate in temporary basis. In general there are not enough services for victims, and particularly scarce are services for victims who are marginalised, unemployed, homeless or delinquent. It can critically be asked whether the state should be

¹¹⁹ Culturally speaking it is also notable that the media reporting on crime victims been as graphic and emotionally charged as in many other countries, even though in political documents victim's needs and rights have been paid attention to. Risk and fear –based discussions and identification of crime victim as anyone are not as familiar in the Finnish context as they seem to be elsewhere. Suffering in general has not occupied a strong position in public discussions. Some researchers have explained the lack of sensitivity towards suffering as a reflection of our recent history, e.g. the second world war which produced a culture of not talking about difficult emotions but working hard in order to survive (Ronkainen 2008).

more active in securing victims' needs and rights in general, and particularly of the people living in the margins.

Conclusions

I have presented here some glimpses on the Finnish crime victims' current situation. These glimpses can be condensed as follows:

Vague victim sensitivity

In the Finnish welfare state victim services are not mainly the state's responsibility but developed and organised by non governmental organisations – they are therefore to some extent random and vary geographically. There is no consistent victim policy in Finland and particularly in the health care and social service sectors the traumatic consequences and aspects of victimisation may not be recognised. The situation is not significantly better in the legal sector, even though formally the criminal justice system provides the complainant with many rights, and there have perhaps been some discussion of the victims' needs. In practice, however, victim sensitivity is not always guaranteed, depending too much on individual officials. It has been claimed that “strong agency” is expected from Finnish crime victims in reaching services and having their formal rights fulfilled (Ronkainen 2008).

The preliminary results of a survey to Finnish victim service clients reveal that these services are contacted mostly by female victims who have experienced serious violence with traumatising consequences. These services are not low-threshold-services since the respondents had typically used earlier different state services, e.g. in health care, social and legal sector. Besides seeking emotional support they needed advice in how to handle their case with different officials. These results may reflect the lacking victim sensitivity in the official encounters victims have found themselves.

Victim satisfaction: expectations on procedural justice

In terms of treatment by criminal justice personnel, the results give a picture of the Finnish crime victims as more dissatisfied with how their case had been dealt with compared to international victim surveys. It seems, however, that many of those respondents who had something critical to say of the process responded to the survey. The problems seem to relate to procedural justice – how the victims had been treated and informed. Their responses provide important information of the problems in the criminal process from the victim's points of view. Similar problems are probably experienced also by those who for different reasons were unable to answer the questionnaire or never contacted any victim service.

Victims in the margins

The third angle to victims' position and diversity in Finland offered in this paper was analysis of expert views on vulnerability. It seems that traumatising aspects of being a victim of violence are well recognised in professional accounts, as well as certain groups' specificities of being a victim, such as children's, immigrants' (mainly women's), elderly people's. The understanding is sensitive in many ways, but at the same time it seems base at least to some extent on the idea of innocent victim. Some groups, such as people in societal margins, can easily be left outside as victims with specific needs and rights. This danger is particularly relevant in the Finnish context in which the state has given the main responsibility of the development of victim

services to non governmental organisations who are forced to compete with each other of scarce and temporary funding. It cannot be expected that the needs of all victims are justly served in this situation.

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Child witnesses of domestic violence

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Domestic violence

Domestic violence affects the whole family, not only adults as possible victims or offenders, but also children as witnesses of domestic violence.

Interest of helping professionals in children which witness domestic violence has grown. So far there is a lack of researches on impact of domestic violence on children. We accept the fact that the child might be affected by domestic violence if he/she witness his/her mom as a victim of domestic violence. However there are no statistics and data on impact of domestic violence on children when their father is a victim. It is important to remember that children very closely watch gender roles of a victim and an offender.

Domestic violence in the Czech Republic

The Czech victim support organization, Bily kruh bezpeci, was founded in 1991. Since 1994 BKB has been paying great attention to DV (at that time our volunteers pointed out that they did not feel helpless, but powerless in contacts with domestic violence victims). BKB started to study domestic violence specifics, BKB searched for know how abroad and did look for specific changed which could have be done in our country. In 1999 BKB started a large project against DV, which included:

2000 – the 1st national research (2nd in 2005) – min 16% of Czech population experience DV – in 84% of families with DV live small children; national campaigns against DV

2001 – BKB opened the 1st 24 hours helpline (about 3.500 calls per year)

2001 - 50% of our clients with DV (now drop to 20 %)

2003 – 2004 BKB run the Pilot project – Interdisciplinary cooperation in Ostrava (the 3rd biggest city in the country)

2007 – The new law on protection against DV (temporary restraining order for 10 days; police uses SARA)

Since 2007:

BKB helped to establish the Network of 15 intervention centers in the country

Police has to obligatory ask about children in the family with DV

Interdisciplinary meetings on regional levels (14 regions in the country)

BKB – trainings for volunteers, police (SARA), helping professionals, weekend psycho recovery stays for clients (often victims of DV come with their small children), toys for children in our waiting rooms etc.

Children and domestic violence

Situation of DV is not clear to children, they fear what might happen

Children need clear borders (attention - violent person might seem to have them!)

Children growing up in DV often deal with anxiety, distress, suffering from headache, depression, lost of hobbies and interests, they are helpless

Children takes responsibility on them, but they have no tools or power to protect their parent as a victim

Children watch and learn roles from their parents (!) – boys often shows aggression in their behavior

Traumatizing situations by children (in Kavermann, 2006):

- 1) Children on run with their mother (23 of women run away with kids younger than 12)
- 2) Children present to police intervention (min. in 53 % of intervention; no special care to children)
- 3) Contact of children with violent partner after their divorce / separation (min. in 20 % psychic violence continues)

How to get into a contact with a child

Important for trust of a child:

Eye contact (sit on the same level as a child)

Introduce yourself

Ask how you can call a child

Explain why you are here with a child, what has happend and what will happen

Be friendly, pay attention to the age and actual condition of a child

Children can surprise you – How should you react?

Unexpected questions (pay attention to them, try to answer them)

Child can change a topic and wants to play (communicate on a child's level, a game is a natural form of communication for children)

Child's imagination

Children have great imagination – mostly worst than the reality is

If you do not say true to a child, it does not mean you protect a child.

Do not talk about things you do not want a child to hear in front of him/her.

Say it was not child's fault what happened.

Recommendation

Pay attention to children (one sentence can make a difference).

Try to have enough time for a child.

Talk to a child in a quiet place.

Do not leave a child alone.

Say something positive.

Talk to parents, relatives etc.

Give contacts on experts

Child witnesses of domestic violence

Ilse Vande Walle

In the Flemish speaking part of Belgium in the last few years the problem of domestic violence got special attention. First of all it was the women who were studied, and after that the children. Often children are not seen in the domestic violence picture. Parents are focusing too much on themselves and can't see the children. Children often hide and pretend nothing is going on. But the consequences for children who grow up in a situation of domestic violence are very serious.

1. Different positions of children during fights¹²⁰.

The positions of children during fights within a family are different. The reactions will be different for every child. But every child will be touched by the situation.

Some children try to be very quiet and hide, trying to make the situation not worse. But other children will try to do something.

Some children will try to help by putting attention on something else, to care, ...

When there is a fight (with words) between his parents Louis (4 years old) will go and sit on the lap of his mother, then on the lap of this father, he will give them kisses, brings toys, sings songs he learned at school, ...

Some children will try to focus the conflict on themselves by being naughty.

The parents of Bram (5 years old) think he's a very difficult child. At moments his parents have difficult periods; having big arguments with each other. After observing the situation it came clear that Bram reacted to the tense atmosphere in the house.

¹²⁰ Based on: Methodiekenwerkmop: onthaal en begeleiding van kinderen betrokken bij partnergeweld binnen een CAW. Hoofdstuk 1, deel 1: Posities van kinderen in ruzies. Steunpunt Algemeen Welzijnswerk. Niet-gepubliceerde tekst

Some children will ask for help or “pretend” they need help.

When her parents have an argument, Lindsay (9 years old) always starts to complain about a stomach ache.

Some children will make a coalition with the victim.

In a fight, Elisa (5 years old) shouted to her father: “You may not say these terrible things to mummy, she didn't do anything wrong to you”.

Some children will make a coalition with the offender.

When the mother of Casper (10 years old) telephones her own mother, Casper says: “I will tell daddy you again called so long, so it will be your own fault you will have less money to shop this week. You know daddy thinks calling is too expensive.”

Children can try to do something by themselves but also parents can involve their children actively in the situation:

Some children are asked for help.

Mummy asks Zoe (8 years old) to sleep with her in bed when she thinks daddy will come home late and drunk.

Ludovic (16 years old) has been asked by his mother not to go away for a week with friends during the holiday. His mother is too scared to stay so long at home alone with his dad.

Some children are taken in coalition with the victim

Simon (5 years old) has been asked by his mother not to give his father's day present to his father because he has been badly behaved again.

Some children are taken in coalition with the offender

At lunchtime Charles makes terrible remarks towards his wife. He says to the 3 children: “ You all see it's clear mummy was not born as a “Smith” like the 4 of us are.”

2. Positions of children in a violent situation¹²¹

Parents who are in a conflict and a violent situation are so focused on each other that they don't realise what the impact of the violence has on children.

Children are witnesses of the violence; they see what happens: the beating, tearing at hair... and they hear what happens: the screaming, the crying, ...

With children it is the same as with other witnesses of a traumatic event. They will never forget what happened. It's always there in their memory.

Kira (4 years old) tells her teacher: “Daddy has beaten mummy, there was all blood coming from her nose. Also her dress was full of blood.”

¹²¹ Based on: Methodiekenwerkmop: onthaal en begeleiding van kinderen betrokken bij partnergeweld binnen een CAW. Hoofdstuk 1, deel 2: Posities van kinderen in het geweld. Steunpunt Algemeen Welzijnswerk. Niet-gepubliceerde tekst

Children can be somewhere else in the house when the violence takes place or one of the parents can send them away. They can't see the violence but they are still a witness.

They hear the crying, the screaming, the fight,... and they try to make a picture of it. A picture that is at least as worse as the reality. Also the silences can be terrible.

Pedro (10 years old) tells the Victim Support worker: "Daddy asked me to go to my room. I didn't, I waited on the stairs. Daddy was screaming, then there was a noise, a beating noise and nothing. And then I heard mummy crying. I was so happy I heard her cry so I knew she was still alive.

Not being a direct witness of the violence doesn't mean the violence has no effect on the child. Realising that the injuries mummy has have been made by daddy, or that the door has been broken by your father, can be very difficult for a child.

Mia tells at the refuge house that when she went home to pick up some stuff Marcus, her little son of 4 years old, looked for some minutes at the broken table. She said: "He really looked at it from all sides but he didn't ask or say anything."

Children can also be directly involved in the violence. This can be their "own" choice. They will try to protect the victim by pushing away or trying to hold the offender. This can make a child not only a witness but also a direct victim of the violence with all the physical and psychological consequences.

Xander (6 year old) hangs on his father's leg. He is crying and begging him to stop beating his mum. His father just slams him away.

Children can also be involved in the violence by their parents. A parent can use the child as protection or to hurt the other.

On a moment like that the parent is really blind to the consequences this has on the child.

Cindy tells how she took the baby when her husband Harry came furiously towards her. She took the baby just because she hoped he wouldn't beat her then. But Harry slammed and hit the baby. The baby fell on the ground and was seriously injured.

Geoffrey came home very drunk. When his wife didn't want to have sex with him he took their 6 months' old baby and hung her upside down through the window. He was screaming that he would let her fall down if his wife didn't do what he wanted.

3. Consequences for child witnesses of domestic violence.¹²²

This text will not focus on the specific reactions of children in every age-phase. But it's clear in every case that the consequences for children in every age group who grow up in an environment of domestic violence are very serious.

¹²² Based on: Methodiekenwerkmap: onthaal en begeleiding van kinderen betrokken bij partnergeweld binnen een CAW. Hoofdstuk 1, deel 3: Gevolgen van partnergeweld op kinderen. Steunpunt Algemeen Welzijnswerk. Niet-gepubliceerde tekst.

Important to know:

Children and adolescents who were witnesses of domestic violence have similar emotional and behavioural problems as children and adolescents who have been a victim of maltreatment themselves.

There are consequences on different levels:

The general situation where the child grows up.

In all families with domestic violence there is a higher chance for the existence of a problematic growing up situation.

Confusing or no boundaries

Chaotic or very rigid lifestyle

Strong and closed boundaries towards the outside world

Very bad communication between parents

Insufficient interest for the emotional needs of the child

Child has a lot of responsibility

Absent, sick or passive mother

Controlling, extreme protecting or alcoholic father

The results of this are:

Problems with empathy

Problems with the ability to find solutions

Low self-esteem

Unsafe bonding

Consequences of the violence itself.

Research shows that the consequences of being a witness of domestic violence are serious and diverse.

Consequences we see a lot are:

Internal consequences (mostly girls): internalising children show signs of depression, low self-esteem. They are anxious, sad, timid, anxious about failure.

Sally (7 years old): "It's not strange I have no friends. Even my mum and dad hate me."

External consequences (mostly boys): externalising children are aggressive, bully, destroy things, struggle with authority

Marc (11 years old): "At school I'm always the one who got punished. My classmates and also the teacher know I start to fight very quickly. So even when someone else is fighting they always say it was me and the teacher always believes them."

Social consequences: it's clear that due to their behaviour children have a lot of problems with children of their age and with adults

Factors who can influence the consequences for children¹²³

Age of the child

The facts of the domestic violence

How long the violence went on

The significance of the violence to the child i.e taking responsibility

The duty of keeping silent about what happens

The child's personality

The presence of protecting factors

A caring adult (grandmother, uncle, neighbour...)

"The most terrible thing is that I know that our neighbour knows very well what's happening at our house. Every time after a fight she doesn't know where to look. Why doesn't she inform the police."(Kevin, 9 years old)

School

Youth activities

"I told my football trainer about the fights between my father and my mother. He just said there is sometimes trouble in every family. I never talked about it with someone else again." (Joshua, 11 years old)

People who appreciate your talents and who show this to you

Good contact with children of your age

Intelligence

Help and support from the direct environment

Restoration of safety in the family.

¹²³ Based on: Methodiekenwerkmop: onthaal en begeleiding van kinderen betrokken bij partnergeweld binnen een CAW. Hoofdstuk 1, deel 4: Beïnvloedende factoren. Steunpunt Algemeen Welzijnswerk. Niet-gepubliceerde tekst

4. Support groups

What we saw in VS was that a lot of children who were witnesses of domestic violence felt very lonely.

"Everyone at school thinks I'm strange. I'm sometimes behaving differently and I will never invite children at home. But I never will tell what is really happening at home." (Melissa, 9 years old)

It became clear that some children had a need to have contact with children who are in the same situation as them. Children have a strong need to belong to a group. They don't want to be different from schoolmates or friends. When a child grows up in a domestic violence situation, it makes that child different than other children.

Since 2002 VS has worked with groups for children who lost a family member by murder, a traffic crash, or suicide.

In 2007 a first group for children who were witnesses of domestic violence was set up.

This group gives children the unique chance to meet other children who, just like them, had violence in their family. In contact with other children they can share their feelings, reactions and thoughts. They can also recognise the same reactions as their own through other children. In this way we can put children out of their "special" positions, and this works by relaxing them.

Because children don't only talk about the facts but they also need to do something and give expression to what they think and feel, this is not only a talking group. It's also a "doing group".

The aims of the group:

Give children who are witnesses of domestic violence the recognition they deserve, and stop them being forgotten victims

Bring children in contact with other children of their age who have been in a domestic violence situation

Give children a safe place and the opportunity to share their feelings, thoughts and reactions with other children.

Support children in a creative way in their healing process

Teach children to recognise different feelings

Teach children how to cope with different feelings

Selection criteria:

Children who lived in a domestic violence situation

Violence had to be stopped for at least 6 months. (In most cases the offender left the house, but it's also possible that the offender is still living in the family but the violence stopped)

Age of children (between 8 and 12)

Development stage of the children

Children must want themselves to take part of the group

Children must have the possibility to come to every session

Mothers have to be available half an hour after every session

The child support group

There were 8 sessions. The sessions are very structured. Every session had one theme that was worked out in a creative way. Themes: secrets, feelings, anger, scared, sadness, the future, own support network... A theme in every session was safety. At the start of every session children were asked to make their "safe place" and at the end of every session they tidy it up again. During the session children can always go to their own "safe space" if needed. After the individual moment they come back in the group to start the session.

"I like to make the "safe place" every time we start the session. It's like my own little house in the big house." (Anna, 10 years old)

The parent group

Parents have a very important role for their children who are witnesses of domestic violence. Especially the supporting parent of the children. In most situations it's the mother who plays this role.

The mothers themselves have often been victimised for a long time and it's often very difficult for them to support their children. Often they don't want to see what has happened to their child.

After every session with the children there was a meeting of half an hour with the parents. Parents were informed about what the session covered, what they could expect from their children after the session, and that they could ask questions. After this meeting there was the opportunity for them to have an individual conversation about their own child with the people who supported the group. Between two sessions parents always got a telephone call from the Victim Support workers.

Evaluation

Parents as well as children had the feeling that there was a positive evolution in the healing process of the child. Children could talk better about their feelings and cope better with them. They had the feeling they were not alone in their situation. Also parents had the feeling that they understood better their children and that they could talk better with them about the facts.

"We could talk with each other about what happened without people looking at us as if we were strange. We made an "angry wall". That was very nice. For me the group worked very well. Especially to know that I was not the only one to whom something terrible like this had happened. I'm able to talk better about what happened, even if it's still sometimes very difficult." (Ann, 10 years old)

"People are always focusing on everything I'm doing wrong. It was just fantastic that Ilse and Jaklien always said when I was good. They really liked my drawings. They even used one on the front page for a booklet they gave to all children." (Kevin, 9 years old)

"When Kevin came home from the group and showed me the booklet with his drawing on the front and I saw how happy and proud he was, I was so happy I almost had to cry." (Martine, mum of Kevin)

Some evaluation points:

Working in group is really positive

Children feel recognised as victims

Children have the feeling they are not alone in their situation

Children learn a lot from each other

In the session about secrets children could think about their secrets and decided what they wanted to do with them: keep them for themselves, talk about it in the group, tell them to someone else like a support person, parent, teacher,...

Children started to tell in the group what they had seen of the violence. All children were sure that their mother didn't know what they had seen. One child said she wanted to tell her mother what she had seen. Other children thought this was very brave. The following session three children had told to their mother what they had seen and heard. For their mother this was very shocking but they were all very happy their child trusted them (the majority of the mothers said that this was for them the most important of all the sessions). The session after that session, all children had told their secret to their mother.

Children learn to cope with structure

Domestic violence situations are very complex

Children are seriously traumatised (this already became clear after the first session)

Often you don't know the complexity of the situation. Mothers tell what they know, and children agree with that story even if it's not true.

Before the group started we got the information that none of the children had seen the violence, this was also what the mothers thought. During the group it became clear that apart from one child, all children had seen the violence and three of them had also been victims themselves.

Difficult to find enough children for the group.

After the violence and when it's quiet again in a family mothers often don't want to be confronted with the past anymore and they certainly don't want to know that the violence can also affect their child in the long term. Because of that it's important that VS and other services focus on the importance of support for children from the first moment they have contact with the parent. But of course without making them feel guilty.

More than eight sessions are needed.

As well the children, their parents and the VS workers had this feeling.

More support for the mothers

After the group we had the feeling that there was something lacking. The group had been very positive but 8 sessions were not enough. So all children and their mothers were referred to individual therapy. We had the feeling mothers needed more support so they could learn to support their children in a different way.

“In the session about the future we made an ideal world box. Anna made a beautiful box and was very proud of it. When her mother came to pick her up. Anna showed the box to her very proudly. Her mother said: “Good Anna, so this will be something else for the bin because you know we have no place for all that rubbish in our house.” Anna was in shock. The support worker saw it happening and went up to Anna and her mother. She asked Anna to tell her mother what she had made. She took the mother aside and mentioned to her how important this was to Anna and that she couldn’t throw it away. The week after Anna came running in and told the support worker that she had been with her mother to Ikea and that they bought shelves for her room, especially for her box.”

“ The mother of Kevin was complaining that she had financial problems because she had to buy a lot of presents for Kevin (9 years old). This was all the fault of Kevin’s school. For 4 weeks they had had a project a school. When children do something good they got a point. If they do something bad, they lose a point. When they have 10 points they got a reward and can choose a present from a present box. Kevin thought this was wonderful and also wanted to do this at home. His mother agreed with it. But now Kevin is giving points to himself. When he goes to bed and she doesn’t have to complain (which she never has to do) he gives himself a point. When he does his homework, he gives himself a point. When his room is tidy, a point, ... So sometimes he has 10 points in one day. So last week his mother had to go three times to the toy store and spent 150 euro on presents for him. She doesn’t dare to complain because he is so happy with it.”

These are just two examples to show the importance of working with the parents, and that was what was lacking in this group.

A second group was set up based on a programme in the Netherlands. First six sessions only with the parents who support the child were set up. In these sessions we work with the parents about what happened to them, and mostly about their relations with their child, how important they are to their child, and how they can support their child. After that they have 10 sessions with the children and 10 parallel sessions with the parents for one hour. After that hour they work together with the child and their parent. I have no final results yet of the group but the first results are very positive. The shortcomings of the first group had been overcome. And this group can be seen as a “therapy” where it is not necessary for individual help still to be needed after it.

5. Conclusion

Child witnesses of domestic violence are a group of child victims who need special attention. We can really make a change in their lives.

Of particular importance is that we can’t work with these children without working with the parent they are supported by.

I want to end this text with a quote from a child of the group:

“I know when I’m angry I start easily to fight with other children. I always got punished for that. In the group they also punished me but they also always asked me why I was so angry. And if the person who made me angry also made a mistake they talked with him too. This was really the first time in my life this happened” (Marc, 11 years old)

Overcoming difficulties in the countries without a national Victim Support Organization

Laura Albu and Laura Chiticariu **Community Safety and Mediation Center Romania**

Analysis of the legal framework of protection of victims in Romania

According with EU legislation, Romania has to adopt a specific legislation harmonized with EU regulations (Dir. 2004/80/E)

1 – Categories of victims benefiting from free of charge service provisions

Definition – persons against whom one or more of the following crimes have been committed:

Attempt of murder, murder and murder of first degree;

Grievous bodily harm;

Rape;

Sexual act with a minor;

Sexual perversion;

Trafficking of persons;

Terrorism;

Any other crime intentionally committed with violence;

In the case of victim death compensations are received by spouse, children and persons who are under the legal support of the person who has died due to the crime committed against her/him;

Other criteria for qualifying as victim of crime:

Victim should be:

Romanian citizen;

Foreign citizen living legally in Romania;

Citizen of a state member of European Union being legally on the territory of Romania at the date of crime committed against him/her;

Foreign citizen with residence on the territory of a state member of EU being legally on the territory of Romania at the date of crime committed against him/her;

In the case of persons who are not in one of the categories above, financial compensation for victims is awarded in the base of international conventions in which Romania is part;

2 – Types of services provided by state -free of charge - under current legislation

Depending on the type of victims, laws are making the following distinction:

A. For victims of crimes with physical violence:

Information for victim regarding his/her rights;

Psychological counseling for a period of maximum 3 months for adults, and 6 months for minors;

Free legal assistance only for penal causes;

Financial compensations;

B. For victims of domestic violence and trafficking:

Psychological counseling inside specialized centers;

Free legal assistance (only if victim make a penal complaint against aggressor)

Shelter;

Social assistance services;

Study case no.1

M.I, female, with income over average wage, with university studies, has 29 years and has 2 children. After being aggressed by her husband she suffered a right arm fracture and has been evicted from her home.

Victim itinerary:

In the first hours after aggression:

She make a contact with police and formulate a complaint against her husband for physical injuries suffered;

She formulate a request for free legal assistance;

She asked for an emergency place to live (shelter) because she and her children have no place where to stay;

Institutions which have to be contacted in the community for benefiting as victim from free services



Institutions responses to victim personal approaches:

Police: Specialized officer has informed victim about what is the list of institutions to be contacted by victim; has informed the victim on her rights; has recorded the complaint;

Court: Have rejected the free legal assistance request because victim income is higher then minimum income on economy (It has NOT have been taken into consideration that victim have no temporary access to her resources due to the constraints imposed by aggressor) to her request: 15 days.

Institutions responses to victim personal approaches:

Probation services (including victim support services) – Have rejected her request for free psychological counseling due to her incomes. Response term to her request: 5 days

Shelter: Her request have been approved Response term to her request: 5 days

Hospital: Medical assistance is received immediately.

Forensic services: Have released the forensic medical certificate – and sent it directly to police as evidence for aggression – but is not free of charge, but equivalent of 25 euro.

NGO: Depending on the expertise and existent funds available on each organization, can provide the following free of charge services: recording the complaint, psychological and legal assistance – independent of level of income victim has, due to the crisis situation in which she is on the moment, she needs support for overcoming the trauma situations generated by the violent episode; response term – one day

Conclusions:

Victim has to make by herself all the institutional itinerary, to make the complaints, to gather evidences and support her case in front of the others;

Response terms of institutions are very long and create insecurity and making worse the crisis situation of victim;

In the community victim support services are targeted with priority towards persons without material and financial resources;

NGOs are the only ones developing other support services besides those of legal and psychological support (for example – mediation)

3 – Procedures regarding financial compensations for victims of crime

Is granted only for victims who made a legal complaint against aggressor in term of maximum 60 days from crime;

The request is analyzed and approved by a committee formed from two judges from the Court;

The amount of financial compensation requested cannot be higher of 2000 euro (10 minimum salaries on economy) and include only hospital expenses and material losses, not including moral losses.

Can be claimed only if the author is unknown and only these losses cannot be claimed from aggressor.

Term for receive financial compensation is 3 years after the crime.

4 – Procedures regarding free of charge legal assistance for victims of crime

Is granted only for victims who made a legal complaint against aggressor in term of maximum 60 days from crime;

The request is analyzed and approved by a committee formed from two judges from the Court;

Lawyers appointed by Bar Association are paid very low, and the quality of this assistance is poor;

This year Ministry of Justice announced that are no funds available for this type of assistance;

Study case no. 2

T.O and T.A are brother and sister born in 1989 and 1990, in a family with modest incomes, infested with HIV in Bacau hospital, in Romania, as a consequence of treatments with non sterile equipment after their birth;

Parents have been announced in 2000 about HIV infestation, even if from hospital documents results that children were recorded ill since 1993. In year 2000 they didn't received any specific treatment or adequate food; as a consequence their illness became worse.

In 2000 medical staff from rural community where family lived broke the confidentiality and announce the community without explaining how this type of disease is spreading – as a result, children have been excluded from the community in 2001 from school and playing group.

As a consequence, children developed serious behavioral problem, because they were marginalized and were missing the contact with other children, and have no occupational alternatives.

Free services requested by children's legal tutors (parents):

Psychological counseling for children

Inclusion of children in the public school system in the community

Free legal assistance for promoting an action against state

Inclusion of children in HIV support services

Free Services offered by public system:

Free antiviral treatment;

Food allowance – a fixed monthly money allocation

Free medical consultations for children

Request for psychological counseling were approved but as psychologist was appointed a therapist from the hospital where children were infected and which was at 80 km of the community where children lived. Families have no personal car, and public transportation was available only in the morning and evening.

Request for free legal assistance was rejected.

The request that children to be included in public system was rejected – children remained without access to education;

Conclusions study case 2:

Parents asked for NGO support which ensured free qualified legal assistance through which was started a legal action against state.

Hospital was condemned to pay 75000 euro in 2007 but which weren't paid even today because hospital have no funds (funds will be available in 2011).

Conclusions

Even there is legislation available, there is no consistent for assistance of victims;

NGOs are know the only ones which are flexible enough for promoting and implementing a efficient victim support scheme in Romania, under current conditions;

Further education as a contribution to the development of professionalism in the field of victim support: Experience and resulting knowledge

Jutta Hartmann ADO

1. The German Federal Association of Professional Victim Support ado (“Task force on Victim Support in Germany”)

The German Federal Association of Professional Victim Support ado (“Task force on Victim Support in Germany”; cf. www.opferhilfen.de) was established as an umbrella organization in 1988 with the purpose of advancing professional help. ado includes 17 member-organisations with some 29 regional-offices. The member organisations give psychological, emotional and practical support to victims of all kind of crimes. Some organisations also offer “victim-offender-mediation”, special support to victims of racist attacks and special support to victims of anti-gay-violence or of domestic violence. The executive committee of ado is made up of an elected representation of member offices, all professionals in victim support. The same applies for the two board of directors. Working for ado the members of the executive committee are partly released from their job. Both executives do their work for ado in an honorary capacity beside their professional victim support in their member organization.

In order to professionally support victims ado has developed standards concerning the contents and personal qualities based on the requirements of this field. ado strives to publicly raise awareness of the issue of victim support as well as making a professional contribution to this field in all of Germany.

The ado has been offering further education to qualified professionals with a nationwide program of advanced training in the field of victim support since 2007, funded by the “Deutsche Behindertenhilfe – Aktion Mensch e.V.” for three years. Before I present you this further education program I would like to say a word about the legal framework of training and further education in the field of victim support:

As you know, the European Union Framework Decision on the standing of victims in criminal proceedings has been in effect since 2001. This provides for, besides the recognition of the rights and interests of the victim during the criminal proceedings, also a number of supporting measures for the victim before and after the proceedings themselves. The members of the European Union explicitly support the engagement of specialized victim support centers. And they have expressly formulated as a goal the fostering of appropriate and professional training of those persons who come into contact with victims (whereas 11 and article 14). This basic resolution has only been unsatisfactorily translated into action by the public sphere. The qualification standards of those professionals active in the field of victim support have until now not been guaranteed. The necessary professional competence is not incorporated in either basic courses of study in higher education nor is it provided through private or public supported establishments.

The further education program of ado is taking action against this deficit.

2. Aims of the nationwide program of advanced training in the field of victim support

The comprehensive aim is an improvement of the support of victims of criminal or violent acts, in that professionals extensively accompany them and thereby follow the principles of victimization. The guidelines are:

a) Prevent Secondary Victimization: Development of a professional attitude

Those specialists and supporting staff should in their interaction with those persons confronted with violence avoid the well-intended reactions and questioning carried out in ignorance which only repeat the injuries inflicted. Harmful effects on the victim include, besides trivialization and impatience, also can exhibit themselves in over-identification with the victim or in lavishing excessive care; that is, they can besides stigmatization, humiliation or discrimination also include the reproach of the victim or the – unconscious – assumption that they are partly to blame themselves. Margarete Mitscherlich (1999) explains the reproach of partial blame using depth psychology. The victim recalls, according to Mitscherlich, their own destructivity and defeat. The attribution of a portion of blame can then be understood as a rationalization of ones own aggression, guilty feelings, or fears. Often the victim experiences the secondary victimization as more injurious than the incident itself.

Help for victims thus requires a high degree of self-reflection. At this level specialists and supporting staff are required to ascertain their own entanglement, such as for example, psycho-dynamic mechanisms of defence through which the victims may be additionally injured.

b) Development of professionalism through interdisciplinarity: Acquiring professional knowledge

The field of victim support is interdisciplinary. The specialized knowledge of victim support professionals is based both on a general as well as a specialized knowledge from various disciplines, which due to the particular situation and needs of the victim are connected within the care for victims.

Knowledge from crisis and victim counselling belong to this field of work, that is, a wide basic knowledge from the traumatisation emergency aid and specialized knowledge from medicine, psychotherapy, and general counselling as well as specialized counselling of traumatized persons. Equally relevant is knowledge of law in order to understand, evaluate and mediate to the victim the work of those institutions involved, such as judicial courts, criminal justice, and police.

In addition, knowledge of and about the care support of after-care institutions is needed, for example, about health insurance companies, and after-care authorities, about providers of local counselling and therapy possibilities, or debtors advice centers. Fundamental to all these is theoretical knowledge from the field of criminology, in particular, victimology.

The acquisition of professional knowledge enable those who in their work come into contact with victims to encounter them correctly not only from the perspective of their respective field of work, but also from the perspective of the interests the victim and to acknowledge the injury and lost of trust they experienced. One must perceive their resources and support them as well as carefully relate to the psychological and emotional aspects of being a victim.

c) Target group specific qualification: Development of professional confidence of behavior

The degree of knowledge needed and the necessary self-reflection differ depending on the position held by the person helping the victim. A person in an advice center for victims requires a more extensive qualification than a teacher who is the first contact person to come to the aid of a school child who was beaten up in the school yard. Correspondingly, we have created various further education instruments based on scientific and professional developments.

3. Instruments of the advanced training program

The instruments of the advanced training program are carried out by the ado's experts in the subject for many years. The offers vary according to the amount of time, the contents, and target groups.¹²⁴ The first instrument I want to introduce to you is the certificate course, the core of our further education program.

a) Certificate Courses

In this courses the participants are qualified over the period parallel to their normal working life as a consultant for victim support. In a balanced theory-practise relationship the specific counseling competences in the field of victim support are imparted.

The Certificate Course is directed towards employees of counseling centers, social education support, and further institutions of social work, the police, the judiciary, and medicine. The course aims towards the development of a professional attitude and the building up of professional confidence of behavior. The courses are carried out in cooperation with the further education center of the Alice Salomon Hochschule in Berlin. The first course ended in May 2009 and the next will begin in September 2009.

Take a look at the curriculum of the certificate course. In 5 modules of 3 days of education each the following subjects are worked through:

Module 1:

Victim support in Germany and Europe: Knowledge of Victimization

Learning goal: The participants will have learned orienting knowledge about victimization principles and will have gained a foundation on which to base their counseling. They place their professional actions in the context of national and international endeavors towards professionalism.

Module 2:

Psycho-social counseling of victims and introduction to the subject of psycho-traumatization

Learning goal: The participants can counsel emphatically and appropriately and command the techniques of dissociation. The border between counselling and therapy is clearly recognizable.

Module 3:

The victim of criminal acts in the legal system of Germany

Learning goal: The participants are enabled to adequately inform the victim of criminal and violent acts about the current rights and duties and their resulting consequences. They are able to explain the sequence of procedures in criminal or civil court proceedings.

Module 4:

Differently different – Aspects of diversity in victim support

Learning goal: The participants can adapt their counseling conversation in a gender and diversity sensitive way as well as according to the type of offense.

Module 5:

Ethical-political dimensions of victim support, Safeguarding of quality and cooperation in social networks

¹²⁴ cf. www.opferhilfen.de/aktuelles.htm

Learning goal: The participants possess a professional as well as a political-ethical attitude as a consultant in the field of victim support and can orient their activities according to quality standards and can connect them to social-political engagement.

Parallel to that the participants meet in peer groups and receive supervision for their translation into action in everyday working life. A final written scientific paper, in which, for example, a case during the time of further education is reflected upon, completes the further education. After consistent participation and successful final paper the course ends with the awarding of a certificate for „Consultant for Victim Support“ and the receipt of 10 credit points, which can be accredited towards a Master in all of Europe.

b) Further Education Seminars

These are as a rule of 3 days duration and are directed in particular towards persons who are active in general counseling centers. The contents are aimed at an introduction to professional victim support or towards an extension of knowledge concerning specific types of victims or forms of offenses. In cooperation with the „Sozialpädagogische Fortbildung Berlin-Brandenburg“ we carried out, for example, seminar with special focus on youthful victims. These further education activities aim at sharpening the perception of the participants for the special situation of victims from different perspectives – from victimology, from the judiciary point of view and the psycho-traumatology. The competence of the participants concerning professional intervention are expanded.

c) Multiplier Seminars

These seminars are carried out for public persons, who are not professionally active in the area of victims support, but are often the first person a victim comes into contact with, for example, teachers or lawyers. The seminars address, among others, also the concerns of ado to lobby for victims. They serve to sensitize those persons who often come into contact with victims and to enable them to respond with an adequate first reaction.

d) Conferences

The conferences concerning victim support address themselves at a national level to all those interested in this field. Here issues are discussed related to political interests of victim support as well as those of the victims and network structures are built up.

Two conferences have already taken place in 2008. With the title „Clear borders? Concerning the relationship of victim support and the victim-offender-mediation“ the controversial question was addressed concerning the chances, but also which dangers, lie in an encounter with „their offender“ for the victims. A documentation of this conference is available online on the homepage of ado. In November of last year on the occasion of the 20th anniversary of the existence of ado we carried out a conference on „Perspectives of professional victim support,“ the contributions of which will be published in the form of a book the end of this year. This September a conference will take place at the Akademie Meißen on the issue „Once a victim, always a victim?“ Legal, psychological and social consequences for persons affected by criminal acts.“

4. Discussion of the experience and the resulting knowledge

In the two and a half year duration of our further education program over 300 participants could be reached. The further education carried out was received and judged very favourably by all participants (for the scientific evaluation cf. Hartmann 2010). Much more difficult than expected, however, was the recruiting of participants for the certificate course. One of the reasons for this was discovered to be price (1.475.- €), which compared to non-subsidized courses with a comparable scope, is assessed as very reasonable. Nevertheless, this price exceeds that at the disposal of social workers. This is especially the case if the employer is not willing to share the expenses, which is seldom done.

At the same time the certificate course has proven to be an inestimable stabilization for specialists in respect to their self-conception as a supporter for victims. At the end of the course the participants not only possess a considerable increase in expert knowledge. Interviews and final papers of the participants confirm that those who have submitted themselves to the self-reflective process of the work display a significant heightening of their level of self-reflection and a deepening of their competence and their self-confidence as well as their scientific expertise.

What does the further education course of ado achieve over and above the direct qualification of participants? From the viewpoint of those persons who are victims of criminal and violent acts, ado sees to it that in the aftermath of working through the events the victim will have to suffer no further injuries. In this regard the program performs a task relevant to the whole society, that is, to stand up for the human rights of victims and to establish a parallel state of justice.

Looking at the field of victim support it is seen that through their provision of further education in all of Germany ado adds a contribution to the principle of total coverage and thus to disseminate the acquired quality standards. Seen in this way, the further education program of ado is at the same time an expression of, as well as a contribution to the increasing professionalization of the field of victim support.

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Coordinating the victims' rights instruments in the European Union

Caroline Morgan **Criminal Justice Unit in DG Justice, Freedom and Security, European Commission**

1) Introduction

The title of this talk is "Coordinating victims' rights instruments" but in fact, there has been very little coordination to date, something the Commission hopes to improve. Council Framework Decision 2002/629/JHA on combating trafficking in human beings and Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography tackle their subject matter from the point of view of the offender, with little regard for the victim. Council Framework Decision 2001/220/JHA is devoted to victims and does not have many provisions relating to offenders. This difference in approach has raised issues of legal basis in the past. There is a clear competence to pass legislation designed to combat crime within the EU, but no clear mandate to assist victims. Whilst this separation may seem very artificial to those on the outside, it is important to Member States that are not in favour of conferring on the EU any more powers than exist under the treaties. In 2009, the Commission put forward proposals to amend Framework Decision 2002/629/JHA and Framework Decision 2004/68/JHA. In this talk, I will set out the provisions and background to the 2001 Framework Decision, and consider briefly why the Commission decided to put forward proposals to amend the other two Framework Decisions, but not the 2001 Framework Decision. I will also consider some issues for the future of EU legislation on victims' rights under the Stockholm Programme and if the Lisbon Treaty is adopted.

DG-JLS (Justice, Freedom and Security) has specific powers for combating crime, managing borders, immigration and asylum, the judicial implications of rising cross-border movement. There is no clear competence for measures at EU level on crime victims, so in this respect, we have to consider ourselves lucky that any EU legislation exists at all. As we shall see, the position would be quite different under the Lisbon Treaty.

There are 3 sources for the Commission's instructions to act in any given field: so-called "multiannual programmes", treaties and Member State initiatives

Multiannual programmes

1999 Tampere Council/Tampere Conclusions

"32. Having regard to the Commission's communication, minimum standards should be drawn up on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims." (point 32 of the Tampere conclusions).

Hague Programme – nothing about victims

Stockholm Programme - ??

Treaties

Treaty on European Union (TEU) - Art 29:

"Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common

action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office

(Europol), in accordance with the provisions of Articles 30 and 32;

- closer cooperation between judicial and other competent authorities of the Member States in accordance with the provisions of Articles 31(a) to (d) and 32;

- approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e)."

Art 31:

"Common action on judicial cooperation in criminal matters shall include:

(a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions;

(b) facilitating extradition between Member States;

(c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;

(d) preventing conflicts of jurisdiction between Member States;

(e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking."

Mutual recognition – mutual trust. Justification for harmonising standards for crime victims.

ULB study.

Lisbon Treaty:

Art 82 (2). To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals."

Member State initiatives

In the "third pillar", action can be taken in response to an initiative by a Member State. Most of our work is initiated by the Commission itself, usually carrying out the wishes of Council under the multiannual programmes, but sometimes we work on measures proposed and presented by the Member States. Under the TEU a single Member State is enough, under Lisbon, a third of Member States currently 9, would be needed to put forward a proposal.

Mainstreaming victims' rights

Within the Commission, we agree that there is a need to mainstream victims' rights.

2) FD on the standing of victims in criminal proceedings

EU measures relating to victims:

1. Commission Communication of 28 May 1999 to the European Parliament, the Council and the Economic and Social Committee "Crime victims in the European Union - standards and action" [COM\(1999\) 349](#) final.
2. Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings [Official Journal L 82 of 22.03.2001] Report April 2009.
3. Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
4. Initiative of the Kingdom of Belgium with a view to adopting a Council Decision setting up a European network of national contact points for restorative justice [Official Journal C 242 of 8.10.2002].

Compensation

2004 Directive on Compensation adopted to help victims obtain compensation in cross border cases and develop cooperation between Member States with a view to facilitating claims procedures. Report April 2009.

The 2001 FD

Designed to give victims the best legal protection and defence of their interests, irrespective of the Member State in which they find themselves. The Framework Decision also contains provisions on giving victims assistance before and after criminal proceedings, so as to alleviate the effects of the crime. To that end, the Member States must align their legislation on criminal proceedings so as to guarantee to victims:

the right to be heard in the proceedings and the right to furnish evidence;

access from the outset to information of relevance for the protection of their interests;

access to appropriate interpreting and communication facilities;

the opportunity to participate in the proceedings as a victim and to have access to legal advice and, where warranted, legal aid free of charge;

the right to have legal costs refunded;

a suitable level of protection for crime victims and their families, particularly as regards their safety and protection of their privacy;

the right to compensation;

the possibility for victims resident in another Member State to participate properly in the criminal proceedings (teleconferencing or video-conferencing, etc.).

training for persons professionally coming into contact with victims;

some recognition for victim support organisations.

Respect for individuals' dignity is to be safeguarded throughout the proceedings and Member States are to make special arrangements to cater for certain vulnerable categories of victim.

2 reports from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (COM(2004) 54 of 16.02.2004 and COM (2009) 166 of 20.04.2009). Show implementation is poor.

3) Measures combating trafficking in human beings

2002 FD:

- Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings,¹²⁵

- EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01)¹²⁶.

Children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings.

That 2002 FD is now being amended. The amending Framework Decision adopts an "integrated and holistic" approach to the fight against trafficking in human beings. Its objectives are more rigorous prevention and prosecution, and protection of victims' rights. Children are more vulnerable and therefore at greater risk of falling victim to trafficking in human beings. All the provisions of the Framework Decision should be applied in the light of the best interests of the child, in accordance with the 1989 United Nations Convention on the Rights of the Child.¹²⁷

¹²⁵ OJ L 203, 1.8.2002, p. 1.

¹²⁶ OJ C 311, 9.12.2005, p. 1.

¹²⁷ United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime¹²⁸ and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings¹²⁹ are crucial steps in the process of enhancing international cooperation against trafficking in human beings.

In order to enhance the process of approximation of legislation, the amending Framework Decision adopts the definition of the crime included in the UN and CoE instruments. The definition also covers trafficking in human beings for the purpose of the removal of organs, which can be linked with organ trafficking.

Under the amending text, penalties should be effective, dissuasive, and proportionate to the gravity of the crime, also with a view to making investigation and prosecution more effective, and improving international law enforcement and judicial cooperation. Aggravating circumstances should take into account the need to protect particularly vulnerable victims including all child victims and adults who are vulnerable because of personal circumstances, or physical or psychological consequences of the crime.

Victims should be protected from prosecution and punishment for unlawful activities they have been involved in as a direct consequence of being subjected to any of the illicit means used by traffickers, such as violations of immigration laws, the use of false documents or offences envisaged by prostitution laws. An additional aim of such protection is to encourage them to act as witnesses in criminal proceedings. Such victims, who bear the consequences of the criminal activities related to trafficking in human beings including the removal of organs, should be protected from intimidation and from secondary victimisation, that is to say further victimisation or trauma deriving from the way the criminal procedure is carried out. Moreover, specific means to ensure effective protection and compensation should be established. Victims need to be able to exercise their rights effectively. Therefore appropriate assistance should be available to victims before, during and after criminal proceedings. The amending Framework Decision establishes an obligation upon Member States to provide any victim with assistance, which should be sufficient to enable them to recover.

In addition to measures available to adults, each Member State should ensure that specific protective measures are available to child victims.

Each Member State should establish and/or strengthen policies to prevent trafficking in human beings including measures to discourage the demand that fosters all forms of exploitation by means of research, information, awareness raising, and education. Member States should take into consideration the possibility of imposing sanctions on the users of any service exacted from a victim, with the knowledge that she/he has been trafficked. This further criminalisation could include employers of legally staying third-country nationals and EU nationals, as well as buyers of sexual services from any trafficked person, irrespective of their nationality.

National monitoring systems such as National Rapporteurs or equivalent mechanisms should be established in order to collect data and carry out assessments on trafficking in human beings trends, measure the results of anti-trafficking policy, and give advice to governments and parliaments on the development of action against trafficking in human beings. Such mechanisms and measures are essential in order to establish effective anti-trafficking policy.

¹²⁸ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, made in Palermo, 2000.

¹²⁹ Council of Europe Convention on Action against Trafficking in Human Beings, made in Warsaw, 16.V.2005, Council of Europe Treaty Series N. 197.

4) Measures combating the sexual exploitation of children

Council Framework Decision 2004/68/JHA introduces a minimum approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims. Although the requirements have generally been implemented, the Framework Decision has a number of shortcomings. It approximates legislation only for a limited number of offences, does not address new forms of abuse and exploitation using information technology, does not remove obstacles to prosecuting offences outside national territory, does not meet all the specific needs of child victims and does not contain adequate measures to prevent offences.

The amending Framework Decision will both repeal and incorporate Framework Decision 2004/68/JHA to include the following new elements:

On substantive criminal law in general

Serious forms of child sexual abuse and exploitation currently not covered by EU legislation would be criminalised. This includes the organisation of travel arrangements with the purpose of committing sexual abuse, something particularly relevant, but not exclusively, in the context of child sex tourism. The definition of child pornography is amended to approximate it to the Council of Europe Convention CETS No. 201 against child sexual exploitation and sexual abuse ("the COE Convention") and the Optional Protocol to the UN Convention on the Rights of the Child. Special consideration is given to offences against children in a particularly vulnerable situation, such as unaccompanied children.

On new criminal offences in the IT environment

New forms of sexual abuse and exploitation facilitated by the use of IT would be criminalised. This includes knowingly obtaining access to child pornography, to cover cases where viewing child pornography from websites without downloading or storing the images does not amount to "possession of" or "procuring" child pornography. Also the new offence of "grooming" is incorporated closely following the wording agreed in the COE Convention.

On criminal investigation and initiation of criminal proceedings

A number of provisions to assist with investigating offences and bringing charges. A mechanism to coordinate prosecution in cases of multiple jurisdictions is included.

On prosecution of offences committed abroad

Rules on jurisdiction to ensure that child sexual abusers or exploiters from the EU face prosecution even if they commit their crimes outside the EU, via so-called sex tourism.

On protection of victims

New provisions to ensure that victims have easy access to legal remedies and do not suffer from participating in criminal proceedings.

On prevention of offences

Amendments to help prevent child sexual abuse and exploitation offences, through a number of actions concentrating on previous offenders to prevent recidivism, and to restrict access to child pornography on the internet. The aim of restricting such access is to reduce the circulation of child pornography by making it more difficult to use the publicly-accessible Web. It is not a substitute for action to remove the content at the source or to prosecute offenders.

As a result, the proposal will also provide added value to the standard of protection set by the COE Convention in a number of ways. From the point of view of substance the proposal includes elements not contained in the COE Convention, such as ensuring implementation across the EU of prohibitions from activities with children imposed on offenders, blocking access to child pornography on the internet, criminalising coercing a child into sexual relations with a third party, child sexual abuse online, and a non-punishment clause for child victims. It also goes beyond the obligations imposed by the COE Convention regarding the level of penalties, free legal counselling for child victims and repression of activities encouraging abuse and child sex tourism. From a formal point of view, incorporating provisions from the Convention into EU law will facilitate faster adoption of national measures compared to national procedures for ratification, and ensure better monitoring of implementation.

Victimisation and Vulnerability

Sandra Walklate *University of Liverpool*

Introduction: Thinking about Victimisation and Vulnerability.

In thinking about victimisation and vulnerability one of the first questions that comes to mind is what do we mean by these terms? Victimisation is normally used to refer to the processes associated with becoming a victim of crime (as opposed to any other form of victimisation) though it can be used in at least two different ways. The first usage focuses attention on the process of interaction that takes place between people that result in the victimisation of one of them and the person victimised acquiring the status of victim. The interactional processes associated with who acquires, and who fails to acquire, victim status and the impact that these processes have on an individual's identity have been relatively neglected within the study of victimisation. As Rock (2002) has observed appreciating victimisation as an interactional process also requires that we appreciate when and how people define themselves as having been a victim, what this means when this has been recognised, what significance is attached to this, and finally, when does the status of victim become problematic. In other words when does the process of victimisation result in an individual embracing a victim identity? All of these questions constitute an important part of understanding the circumstances in which some people acquire victim status and others do not but become particularly acute when the process of victimisation is a result of intimate relationships either within the family or within an individual's neighbourhood.

The second usage of the concept of victimisation refers to the ways in which becoming a victim of crime is not evenly distributed in society. Here victimisation is used to refer to the patterning of criminal victimisation that is structured by age, class, sex, and ethnicity. For example, criminal victimisation survey data consistently reveals that younger people are much more likely to be victimised than older people, the economically marginal and those lower down the social hierarchy are much more likely to be victimised than those higher up the social hierarchy; people from ethnic minorities are much more likely to be victimised than others, and in the context of street crime, men are much more likely to be victimised than women. When the picture of victimisation is framed in this way it becomes clear that the young, economically marginal male who belongs to an ethnic minority group is much more likely to be victimised, especially in the street, than any other category of victim.

When we turn to the concept of vulnerability, the Oxford English Dictionary defines vulnerability as that 'that maybe wounded or harmed'. As Green (2007) has pointed out, the concept of vulnerability has rarely been explored in its own right though as Killias and Clerici (2000) have observed it too may be shaped by internal and external factors. If we refer back to criminal victimisation survey data commented on above, those young men who are most likely to be victimised are also the least likely to be viewed as vulnerable to such victimisation but are most likely to be seen as the perpetrators of such victimisation. Thus patterns of victimisation, when linked with images of vulnerability, mirror the thinking that assumes either an individual is either a victim or they are an offender when the data would suggest that young, economically marginal males from ethnic minority groups belong to both categories; that is, they offend against and victimise each other. So not only are some groups of people more readily identified as victims than others (qua Christie's 1986 construction of the ideal victim) some people are more readily identified as vulnerable to victimisation than others.

In my own early work for a victim support scheme in Liverpool in 1983, I interviewed an elderly lady extremely distressed by the theft of her son's watch. (For the purposes of this presentation I shall call her Doris: that is not her real name). It transpired that her son, who lived with her, had died in his forties from cancer, and her coping mechanisms for managing this had been to organise her time in such a way so that she spent less

time in the house on her own; one day shopping, one day in the library, one day at the luncheon club etc. The burglary and the theft of her son's watch, not only challenged her way of managing it also added further pain to the loss of her son through the loss of his watch. The one possession she had left to cherish. Life for Doris had become 'mindless' insofar as her routines, habits, had been taken away from her; first by the bereavement, second by the burglary. Her coping routine had been taken away. She chose to stay at home to prevent a further invasion of her privacy but in doing so was faced with her other loss, that of her son. Her suffering was private. It was a mere happenstance that she shared it with me. However her story epitomises the classic image of who is vulnerable that Green (2007) has discussed as one dimension of an 'axis of vulnerability'.

Green's (2007) analysis reminds us that vulnerability is not only understood in relation to the harm done by victimisation but is also understood as a reflection of the level of risk from victimisation. Each of these dimensions of vulnerability, of course, are themselves a reflection of the way in which the criminal victimisation survey methodology has endeavoured to measure who is at the most risk from crime and on whom crime has the most impact. So Doris, in line with this kind of data source would be in the low risk, high harm, category, and the young male from an ethnic minority group would be in the high risk, low harm category, with the least vulnerable (that is low risk, low harm) likely to be the affluent middle class male and the most vulnerable (high risk, high harm) being the poor, single adult household. When vulnerability is collapsed with harm and risk in this way it is easy to see how the young become more readily identified as offenders rather than victims (Pheonix, 2008, Muncie, 1999) and how the processes of victimisation, of becoming a victim or not, are lost. As Mawby (1988: 101) has commented, 'Crime is perceived to be an age war, with young offenders preying on innocent older victims..... Politicians have quickly, and quite unjustifiably, identified the elderly as particularly vulnerable to crime'. Whilst this does not mean that some older people may not be vulnerable it encourages us to think very carefully about the extent to which victimology has contributed to a rather static and negative understanding of old age (Pain, 2003). As Das (2007: 63) has observed, 'to be vulnerable is not the same as to be a victim'. What might this latter observation encourage us to think about?

In making this statement Das (2007) was drawing upon her anthropological work in which she tries to make sense of both the individual and collective responses to violence in the aftermath of the partition of India in 1947 and the massacre of Sikhs after the murder of Indira Ghandi in 1984. In both these instances she observed events and processes that illustrate the extent to which such violence marked what she calls a 'descent into the ordinary' (ibid: 14). A process whereby whilst human beings do pose a threat and constitute a danger to each other (harm?) they are also a key source of hope for each other, so an engagement with suffering is also an engagement with the healing of everyday ordinary life. How might this perspective help overcome some of the stereotypical thinking that has become embedded in the way in which the relationship with victimisation and vulnerability has been constructed? One way might be to revisit the contribution of feminist informed work to the study of victimisation and vulnerability.

Feminism, agency, and vulnerability.

The uneasy relationship between victimology and feminism is well known and is normally exemplified in their respective uses of the terms 'victim' and 'survivor'. For feminists the links between the term victim and being female, both historically and linguistically, imply that the passivity and powerlessness associated with being a victim are also associated with being female. The adoption of the term survivor endeavours to capture women's resistance to structural powerlessness and the consequent potential victimisation. More recently commentators like Furedi (1997: 101) have noted a growth of a 'culture of victimhood' in which the consciousness of being 'at risk' (especially in the light of various global events of the last decade) readily translates itself into a victim identity. These wider cultural processes notwithstanding, work emanating from the feminism usefully reminds us of both the structural dimensions to victimisation, that which Carrabine et. al.

(2004: 117) call the 'hierarchy of victimisation' and its links with Christie's (1986) 'ideal victim' and the choices that people may make when faced with difficult circumstances like, for example, choosing to stay in a violent relationship (Kirkwood, 1993). Of course the either/or dichotomy articulated in the tensions between the terms victim and survivor not only masks the processes of victimisation (alluded to above) that also have structural dimensions (this is evidenced by studies illustrating particularly younger women's declining complicity with violence; see Lewis, 2004; Piipisa, 2004; Savolainen, 2005) but also masks the politics of victimhood; the processes that underpin changes in the 'hierarchy of victimisation'.

It is clear that whilst the elderly, female victim of violent crime might still be placed at the top of the victim hierarchy, especially as far as the media are concerned, positions in this hierarchy can change, as evidenced by the increased policy and political concern with for example, hate crime or trafficking. In relation to the discussion here the attention given to the trafficking of women in particular raises some interesting questions. The work of Agustin (2007) and Aradau (2004) suggests that there are clear contradictions between how women migrants who sell sex see themselves, as having agency i.e. having made a choice, and the way in which the European policy response identifies them, as not only illegal migrants and victims but also as the suffering bodies of prostitutes. A contradiction also found in recent work feminist informed work on prostitution (Sanders 2005) and young female criminality (Miller 2008) All differently illustrating the ways in which both the processes of victimisation and the politics of victimisation can be masked. In a similar vein the decision made by the British Government to define soldiers wounded in Iraq and Afghanistan as victims of crime rather than victims of war rendering them eligible for compensation poses equally interesting questions for a group of people traditionally least likely to be conceived of as either vulnerable or victims.

Of course, the politicisation of the victim is not new (see Miers 1978) what is perhaps new is the shift in the wider cultural processes that now appear to be more open to new categories of victim thus blurring the boundaries in the victim hierarchy resulting for some in the view that we are all victims now. However, the contribution of feminist informed work and its use of the term survivor illustrates that we are not necessarily all victims or, to return to Vas (2007), to be vulnerable does not necessarily involve becoming a victim. The question remains as to how to understand why it is that some individuals become victims and others do not.

Thinking about resilience

Schoon (2006: 7) suggests that the concept of resilience has been used to refer to; a positive outcome despite experiencing adversity, continued positive functioning in adverse circumstances, or recovery after significant trauma. She goes on to say that 'In order to identify resilience it has to be established whether the circumstances experienced by individuals do in fact affect their chances in life. If there is no association between the experience of adversity, access to resources and opportunities, and consequent adjustment, the phenomenon of resilience would be a mere chance event, a random occurrence' (ibid: 8). Thus by implication resilience, like vulnerability, has both internal and external dimensions. Also like vulnerability, it cannot be measured directly but is measured by exposure to adversity and adaptation to risk. This has resulted in a wealth of empirical material identifying behaviours and factors that contribute to the resilience of at risk populations in which (interestingly) age and subsequent lifecourse development feature as important variables (see for example Layler 1999; Bouvier 2003; Ungar 2004). However, as Ungar (2004) is at pains to point out, our understanding of resilience, like vulnerability, is exposed to social construction. He argues that, for example, findings that suggest 'the young person who leaves home to live on the street has been shown to be more resilient than the youth who demonstrate passivity and continues to live with abusive parents.....have largely been sidelined...' (ibid: 360). So how might understanding resilience facilitate an understanding of victimisation and vulnerability?

If we return to the earlier discussion of the victim/survivor dichotomy and add to this an understanding of agency and resilience, we can see more easily that an individual at different points in time in relation to different events could be an active victim, a passive victim, an active survivor, a passive survivor, and all the experiential bus stops in between, thus allowing us to appreciate that individuals know when events have just happened to them, (they have been victimised and are constructed as such?), when events are a result of the actions shared between themselves and others, (when they are vulnerable to victimisation and maybe constructed as such?) and when events have happened because of their own actions (they are not a victim but still maybe constructed as such?). In each of these possibilities whether or not they embrace the victim label maybe connected to their capacity for resilience. Consequently it is perhaps useful to think of the relationship between victimisation and vulnerability as being mediated by an axis of resilience: a dynamic process in which an individual's capacity to survive may be subject to change over the course of their life suggestive of a complex interplay between vulnerability, adversity, resilience and capability.

Conclusion: Victimisation, vulnerability and the politics of pity

As Aradau (2004: 257) observes the foregrounding of emotions (for feminists and others) have provided the space in which radical politics of intervention have emerged in which 'pity can be said to function rather as an anti-governmental technology, concerned with emancipation from particular systems of power, or from the effects of the deployment of particular techniques of power'. But, of course, as she goes on to say 'What suffering becomes recognised in the public domain is a question of struggle and construction and not of inherent "merit".' (ibid: 258), as some of the examples used in this presentation illustrate. However the politics of pity not only apply in the macro political world, whether or not the trafficking of women or soldiers are seen and responded to as victims, such politics also apply in the everyday routine world of help. As Christie (2008) has commented, 'Help might also increase your troubles. Help helps define you as weak and vulnerable. In addition comes that being given the status of being a victim might increase the suffering and slow down the healing process..... A good victim policy would be to reduce the importance of being a victim and instead emphasise an identity based on having been able to restore dignity as a decision maker in one's own life'.

Some time ago C. Wright Mills (1959) made the following observation, 'Know that many personal troubles cannot be solved merely as troubles, but must be understood in terms of public issues – and in terms of the problems of history-making. Know that the human meaning of public issues must be revealed by relating them to personal troubles- and to the problems of the individual life'. This relationship between personal troubles and public issues is an intriguing one in relation to this discussion. If I go back to where I began Doris certainly had personal troubles. Troubles that were partly a result of the problems of her individual life but were also partly a result of the more public issue of crime. For her, to resolve some of the distress that she was experiencing was relatively straightforward: she wanted the return of her son's watch. She knew that other elements of her distress were for her to resolve. She needed to find a way of re-establishing her habits and routines so that her existence was no longer mindless (qua Sennett 1998). However in the intervening years since I spent time with her, it would seem that the capability of individuals to resolve their own personal troubles that belong to them has been increasingly eroded. In this sense I agree with Furedi's (1997) comment that we are all victims now. Some of this erosion is also related to the persistent intertwining of vulnerability with victimisation and the failure to appreciate the nature of the processes in between. It may be of value to begin to reconsider that relationship alongside the multi-layered nature of the politics of pity so that the private troubles of victims as a result of the public problem of crime are not further exacerbated by the interventions they are exposed to.

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Victimisation and Vulnerability

Lord Justice Thomas *European Network of Councils for the Judiciary*

Introduction

It is a great privilege to have the opportunity of addressing this significant conference.

It is self evident that, with the increasing movement of citizens between the different Member States, there are certain minimum standards which must be accorded under the criminal law to persons whether they be victims of crimes or defendants. Given the very different nature of the procedural law and practices, sometimes it will be appropriate to accord minimum rights and sometimes appropriate to ensure that a person is aware of and can understand his or her rights. That is because it is a fundamental principle of a society governed by the rule of law that the law should be accessible to and understandable by the citizen and, where appropriate, assistance given to enable the rights to be effectively exercised.

We therefore regard the clarification of common standards as applicable to victims and to defendants as work that must proceed in parallel. It is for that reason that we made clear in the Network's submission in relation to the content of the Stockholm Programme that both aspects should be dealt with.

May I now turn to deal exclusively with victimisation and vulnerability. I will do so from the standpoint of a judge.

Who is a victim? Who is a vulnerable victim?

The first question that arises in dealing with the position of victims is to define what is meant. The Framework Decision of 15 March 2001 (the Framework Decision) defines a victim as someone who has suffered harm directly caused by acts or omissions that are in violation of the criminal law of a Member State. In many crimes, there will be no dispute as to who is the victim – the person whose house has been broken into or who has been robbed in the street or the passenger injured by a dangerous or drunk driver. However, there are other cases where whether the person who claims to be the victim is a person who has suffered harm as a result of the violation of the criminal law cannot be determined until the conclusion of the proceedings.

This is not an academic question because some take the view that, where there is an issue as to whether the person who claims to have been harmed by a violation of the criminal law has in fact been harmed as a result of a violation, the criminal process should be neutral until the actual position is determined.

A victim for the purposes of the investigation and trial, in my view, is someone who alleges that he or she has been caused harm by a violation of the criminal law. That is because in examining the rights of a person who alleges he or she has been a victim, it is that person's status as an alleged victim that is most important. It may turn out that the victim has brought a wrong accusation, such as alleging the injuries sustained were the result of an attack when it is eventually determined by the court that the injuries were caused by the other person acting in lawful self defence. That is, of course, relevant to the issue of compensation but is not relevant in the way a victim should be treated in the stages prior to a determination by the court.

As to the vulnerable victim, there are certain victims such as children or the infirm, where it is clear. Beyond that, I agree with the view that it is not possible to define the categories.

Accessibility of rights and obligations

It is an unfortunate feature of the development of much law in recent years that it is now highly complex and, given the volume, difficult to find, even for judges and lawyers. Whereas the rights of defendants in criminal cases are normally set out in fairly well understood legal instruments such as Article 6 of the European Convention on Human Rights (ECHR) or in constitutions or basic laws of the Member States, the rights of victims are neither so clearly established nor set out. There are understandable reasons why this is so given the long historic development of the rights of defendants in prosecutions by the state where prosecution was used as a means of supporting dictatorship and suppressing liberty. Furthermore such rights as exist are not always set out in legislation, but are sometimes contained in what are known as “soft law”. By “soft law” I mean codes of practice, common understandings or other procedures which are not founded on clear legislative provisions. Although there is nothing inherently unsatisfactory in “soft law”, it makes the task of ascertaining what the rights of victims are and what obligations are owed to them more difficult.

It seems to us, therefore, that just as it is important for defendants when in a Member State which is not the state of their nationality to know what their rights are, it is also important that there should be accessible to victims of crime a clear statement of the rights that they have and the obligations that are owed to them by, for example, the prosecutor or the court, in the course of the action by the state to deal with the crime of which they were a victim. The rule of law demands no less.

The right to support and to legal advice

The right to assistance and support for the victim and the vulnerable and the right to legal advice are distinct. From what I have already said, it is in my view a basic requirement of the rule of law that a victim should know what his or her rights are. In many cases, particularly where the crime is a more serious one or the victim vulnerable or a child, it is, these days, very difficult to see how a victim can exercise those rights without the assistance of a victim support organisation. That must be particularly important for a person who is in a state that is not his or her own, but as court processes, if the case goes that far, are generally processes where a person who is unsupported is unlikely to do himself justice or feel at the end of the day that justice has been done. It is therefore difficult to see how it can be argued that the provision of victim support is not as much a basic right as is the basic right of a defendant to legal advice.

Whether such support should extend to the provision of legal advice is a more difficult question. There are many cases where the law enforcement agency can properly be relied upon to provide the necessary legal advice and it is therefore difficult to argue that the provision of state funding, given the other calls upon the resources of the state can be justified. Article 6 of the Framework Decision is quite understandable in the heavy qualification it gives to the right to legal assistance.

Common issues

In considering the position of victimisation and vulnerability, it is necessary to consider separately the two principal stages that are characteristic of all criminal proceedings – the position before the court proceedings and the position during court proceedings.

There are, however, certain common issues that arise when assessing how the state should treat the victim and the rights that the victim should be accorded.

How is the initial reaction of the victim such as shock, surprise, fear, or upset addressed?

What is the speed and quality of response of the state to the victim?

How is the victim treated during the process?

What information is provided to the victim during the process?

What explanation of the result of the state's action is provided?

How are the particular needs of the vulnerable victim to be met?

The objective of the state should be to ensure that its processes are such that at the end of the proceedings the victim should have been justly dealt with and that harm suffered should have been mitigated by the process. To that end, the rights of victims and the vulnerable and the obligations owed to them must be clear. As the Network made clear in its Resolution passed in its Bucharest General Assembly on 29 May 2009, the interests of all involved in judicial proceedings, including victims, must be taken into account and all should be treated with consideration and fairness.

The position of the victim prior to court proceedings

It is important that the rights of the victim, as understood in the sense in which I have defined it, commence at the time that the victim reports the offence to the law enforcement agency of the Member State that has responsibility for investigation.

Information as to rights and expectations

As Article 4 of the Framework Decision makes clear, it is essential that at that stage the victim is provided with detailed information as to the victim's rights and what the victim can expect. It is obviously important that such information is available in commonly used languages at each police station within the European Union. It seems to us important that such a statement is made available at the time the police officer or other enforcement agency records the complaint or otherwise initiates the investigation.

The initial report

A victim should be entitled to prompt and considerate treatment when the offence is reported; such treatment must take account of the common reaction, such as shock or fear, that a victim suffers. It is easy to express this as a right, but it is one that is difficult to enforce. In contrast to the position of a defendant where a failure to respect defence rights can lead to a prosecution failing, a failure to observe the victim's rights has no readily available sanction. The important factor is that the culture of the law enforcement agencies of the state is firmly based on the clear expression of the victim's rights.

Support for the vulnerable

There are clearly some crimes where support is needed from the outset, such as a sexual or violent assault. Whether or not there should be a common right and common standards across the EU as to the provision of support for all vulnerable victims at that stage is probably a political decision. However, there should be no dispute in respect of the special needs of child victims. It should in any event be made clear in the statement of rights and obligations what the victim is entitled to expect.

The taking of the evidence at the investigative stage

There is a considerable divergence, because of the historic and legal development of the different systems, in the process by which the evidence of the victim is taken at the investigative stage. Although there can for that reason be no uniform standard as to the legal process through which that evidence is to be taken or recorded at that initial stage, there is no reason why there cannot be common standards in relation to courtesy, consideration and for the provision to all victims of a copy of the evidence that he or she has given.

There also should be the common acceptance that special arrangements are needed for the vulnerable. Taking and recording the evidence of a child or the victim of a sexual assault is a skilled task; a failure to appreciate that and to adopt a specialised approach may damage not only a successful prosecution but increase the harm that the victim has suffered.

The decision by the law enforcement agency

Again, although the processes will differ from Member State to Member State, a time will come in the investigative stage when the law enforcement agency will make a decision on how to proceed. It may be a decision to impose upon the defendant a warning or some out of court penalty. It may be a decision to continue with proceedings that will involve a trial, unless the defendant admits his or her responsibility for the crime.

Although it is not possible to provide that a victim must have a part in that decision-making, as procedural differences between the Member States are so considerable, there is no reason why there cannot be a common requirement that the victim is told at the earliest possible opportunity of the decision that has been made and the reasons for such a decision. It is the proper provision of information both as to what is happening and why decisions have been made that is so important to the victim.

Protection

A victim may require special protection, but this for most crimes is fortunately not necessary; as Article 8 of the Framework Decision provides, the right to protection where there is a danger, should be an absolute right, where the victim is in danger.

The position in court proceedings

The timeliness of the trial

It is well established and embodied in Article 6 of the ECHR that a defendant is entitled to a trial within a reasonable time. It is, however, as important to take into account the position of the victim particularly where vulnerable. Should not the victim also have a right to the timely disposal of the case? This is surely important where the victim is a child or there is a sexual assault. For example, a court will always want to ensure that a defendant in custody is tried as soon as possible so that if innocent he or she can be released. But is it right always to give priority to such cases in preference to the trial of a serious sexual assault where the defendant is not in custody, but the victim is worried and anxious to have the case tried?

Giving evidence

The right of the defendant to confront witnesses is also long established and embodied in Article 6 of the ECHR. What is not as developed is the balance between that right and the rights of a victim who may be in

fear of giving evidence or whose vulnerability needs protection. Although it is now accepted that those rights have to be balanced, the process of how this is best done is still being worked out. Surely it is a necessary requirement of the rule of law that the right of a victim who is too frightened to give evidence in the presence of the defendant or his or her lawyer is entitled to have that evidence considered and evaluated, provided that the rights of the defendant can be sufficiently safeguarded? Much more needs to be done to ensure that there is a proper balance between the respective rights.

Most judges appreciate that giving evidence is a considerable ordeal for a victim, but training is needed to make sure judges know how best to treat victims during the entire court process. It is clearly a right of the victim that he or she should be treated with consideration and courtesy. That should be so, not only in the way the evidence is tested, but in the way the timing of the evidence is arranged and the witness treated whilst waiting. It is sometimes too easy for courts to lapse into running their schedules for the convenience of the lawyers.

What is important also is that there is provision for making sure that the victim understands the importance of the role of his or her evidence in the case and what might happen in the course of giving evidence – the right to proper information. In systems where the right to confrontation is exercised through cross examination by a defence lawyer, a witness must understand what that entails and the role such an examination will play in the decision of the court. In cases where it is clear that the victim will be subject to a critical examination of the testimony, proper support is the more important. It is in all such cases that the role of Victim Support is so important.

I trust that it is now beyond argument that the vulnerable need special consideration. This has long been accepted in the case of children, but the best way of taking a child's evidence is a subject where much still needs to be done; for example, many lawyers still do not understand how to ask questions of a child. Consideration of the position of other vulnerable witnesses is more recent and still being developed. Again training is essential.

The decision of the court

At the conclusion of the trial, when the decision is made and, if it is one that finds that the defendant has committed the crime and a penalty imposed, the position of the victim needs special consideration. First, if the decision is adverse to the victim, then the victim has a right to be told the reasons why it is that the case has been decided in that way.

Second, if the defendant is found to have committed the crime, then when a court comes to impose a penalty, the victim should be given information about the type and length of penalty a court is likely to impose. This is particularly important given the range of penalties applicable in the different states and differing practices as to whether a court will take into account either the views of the victim on penalty or the impact the crime has had on the victim or on the community in which the victim lives. Again, the procedural systems vary, but the one thing that should be without doubt is the victim's right is to be told how the procedure works and the role, if any, which the victim can play in it.

There is little doubt that a court must take the impact of the crime on the victim and the community into account in assessing the penalty in each case, but it is important that the court explains in terms the victim can understand how it has taken these factors into account. We should never underestimate the importance of a full explanation.

Appeals

I regret to say that unless the appeal is brought by the prosecutor, the victim is often forgotten when an appeal is made by the defendant. During the appellate stage the victim should be entitled to information as to what the process involves and, at its conclusion, should be informed of its result. Some appellate systems make provision for the attendance, either with a right to speak or without that right, at the hearing of the appeal. Although I do not think it can yet be argued that the victim should have the right to attend with his or her expenses paid, it is in my view important that the victim should understand, if the verdict of a lower court is changed, what the reasons were.

There are some systems, of which my own is an example, where some years after the commission of a crime and the conviction of a defendant, the discovery of new evidence can lead to a review of the verdict of the trial court. As regards the victim or the victim's family, the re-opening of such proceedings can be very difficult, particularly in the case of a homicide where the victim's family would have considered, to the extent that it is possible, that the matter had been closed. It is therefore very important that the rights of victims or their families should be explicitly recognised at any such stage, in the same way as they are recognised on appeals.

The right to compensation

It would not be apposite for me to speak on the issue of compensation for victims of crime. The extent to which such compensation is available and the amount of such compensation is plainly a political matter. However, it is important that the procedures are simple and easily understandable. If, for example, the trial court makes an order for compensation, then there must be a mechanism for easy enforcement. Again it is a political matter as to whether such enforcement is left to the victim or to the state and whether the state guarantees the payment of the compensation, taking the risk of recovery from the defendant. If the court does not make the order for compensation, then the procedure by which the state compensates the victim, if such a procedure exists, must be one that is easily enforceable.

Conclusion

I hope, therefore, that these few remarks may help illustrate what we as the Network of Councils for the Judiciary in Europe consider is properly required and how much we value the work done by victim support organisations. We very much hope, therefore, that when the Stockholm Programme is finalised the Member States will take the opportunity to provide a clear programme in respect of the position of victims of crime, particularly the vulnerable, and to make provision for a proper review of the rights and obligations in each Member State towards victims and the vulnerable, the means by which such rights and obligations are set out within the legal regimes of each Member State and, no doubt, in due course a revision of the Framework Decision.

In the meantime, however, there is much we can do; judges must be properly trained to understand fully the position of victims and how to mitigate, through the court process, the effect of the crime on the victim of that crime. Judges must ensure they are aware of the issues in their courts relating to victims (such as delays or lack of separate waiting rooms) and seek to address them through regular contact with victim support organisations. All who work in the criminal justice system should act together to ensure that both the defendant and the victim are dealt with fairly at all stages. To date, we may not have focussed sufficiently on the position of the victim, and it is that change in focus that we must bring about throughout the European Union by the adoption of the best practices shared between the Member States.

Measuring Crime Victims' Paths to Justice: Developing Indicators for Costs and Quality of Access to Justice

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Introduction

While research is abundant regarding the experiences and obstacles which exist in a victim's attempt to obtain justice, a more systematic approach is lacking which attempts to measure all aspects of victim experiences at each stage of their journey. This journey may include contact with the police, the prosecutor and/or the judge. Not only the decision-making phase, but also the actual procedure may impact the victim's level of satisfaction. Furthermore, costs may be incurred along the way, both emotional and monetary. Therefore, this paper addresses the question of how to measure victim experiences when obtaining justice by uncovering (1) the costs of justice (2) important aspects during the procedure, and (3) necessary characteristics of a satisfactory outcome.

The improved position of crime victims in criminal proceedings (Groenhuijsen, 2004) has been coupled with an increase in research exploring their experiences and subsequent satisfaction with justice proceedings. (Boyle, 1999; Braithwaite, 2002; Buzawa & Austin, 1993; Coupe & Griffiths, 1999; Fleury, 2002; Horton, Simonidis, & Simonidis, 1987; Hotelling & Buzawa, 2003b; Orth, 2002; Shapland, Duff, & Willmore, 1985; Strang & Sherman, 2003). Using the systematic approach described in this paper offers insights into factors determining the performance of procedures.

The Measuring Access to Justice (MA2J) study group has operationalized a path to justice from beginning to end. To begin a given procedure, an individual – referred to as a user¹³⁰ – may find that s/he has a justice need. A justice need is defined as “a situation in which a person may develop a need for protection by outside norms or interventions that structure the conduct of another person that he may encounter or has a relationship with” (M. Barendrecht, Kamminga, & Verdonchot, 2008). Justice may be obtained through varying ‘paths’ defined as “commonly applied procedures which users address in order to cope with their justice needs” (Maurits Barendrecht, Mulder, & Giesen, 2006). In addition to the criminal justice system, paths for crime victims may also be civil proceedings, restorative justice proceedings (independent or part of the criminal proceedings) or out-of-court settlements. The path begins¹³¹ when the person first addresses the process and ends¹³² when a decision has been made by a neutral or a decision-maker, when an agreement is reached by the parties or when one or both parties drops out of the process¹³³. The path is measured in terms of its costs and the quality of the procedure and quality of the outcome.

Costs are further operationalized as monetary costs, time spent, money lost due to attending procedures and stress and other emotional costs. The quality of the procedure is measured by user's perceptions of interpersonal, informational, procedural and restorative justice. Evaluations are made of the procedure in a

¹³⁰ While user refers to both parties in non-criminal matters, this research focuses on the victim in the proceedings, and does not thoroughly evaluate the offender's experience.

¹³¹ Examples include contacting the police, contacting victim support / NGO or searching for a lawyer.

¹³² Examples include prison sentence (or some other guilty verdict), an apology or compensation.

¹³³ This definition is adjusted for crime victims. For these users of justice, the neutral / decision-maker may be the police, a prosecutor or the judge. While these actors may not be the final decision maker in given case, their performance is still evaluated as they are representative of the criminal justice system and other justice proceedings. Furthermore, even if the victim voluntarily drops the charges or refuses to cooperate, this may be a direct result of a poor quality of justice. While there is no decision-maker, contact has still occurred.

strict sense (i.e. opportunities to participate or to avoid the offender) but also of the neutral / decision-makers role during the procedure (i.e. extent of information given or polite behavior)¹³⁴. The quality of the outcome consists of perceptions of distributive justice, corrective (or compensatory) justice, restorative justice, retributive justice, utilitarianism, informational justice, transformative justice, legal pragmatism and formal justice. In later sections of this paper each concept will be elaborated further.

The approach of this paper is two-fold. An existing methodology is reviewed and then adapted to victims of crime. Various needs and desires of users are prevalent in all types of legal problems alike. It is possible to use comparable justice theories to serve as a framework for the measurement of costs and quality of access to justice for both victims of crime and other non-criminal matters. The MA2J methodology assesses the costs and quality of the procedure and outcome that users of justice face when travelling the most common paths to justice. While this methodology does not focus on crime victims, we are provided with a sound foundation. The framework of this methodology is outlined in several texts and will be elaborated further in this paper (Gramatikov, 2008a; Klaming & Giesen, 2008; Verdonschot, Barendrecht, Klaming, & Kamminga, 2008).

The method behind the analysis begins with an examination of what justice should be, based on the normative literature and by reviewing the factors that past research has found to be vital to crime victims. The output will lead to a measurement tool which will facilitate an analytical and comparative examination of the existing paths a victim may follow. In a structured manner, each element faced by the victim – whether it be related to costs, the actual procedure or the outcome – is included.

First, this article will justify the need for an additional analysis for crime victims. A review of empirical studies on victim experiences with various parts of justice proceedings is then discussed. The practical use of the measurement tool is examined. Next, building on the Access to Justice framework mentioned above – in short, the costs, quality of the procedure and quality of the outcome – the paper delves into the necessary elements of costs, the quality of the procedure and the quality of the outcome to measure the victim's experience. This analysis is constructed on the basis of the various justice indicators which are discussed throughout the paper – both those already established in an existing framework and those found especially vital to the experiences of crime victims. Next, control variables are reviewed to suggest that other qualities of the procedure, the offense or the participants may play a role. Finally, the discussion and concluding remarks review the practical measurement of the instrument. This use primarily focuses on the ability to compare different paths within one jurisdiction and similar paths among numerous jurisdictions.

A. Defining Characteristics of Victims of Crime

This paper will first outline the existing framework based on various justice theories applicable to users of justice in non-criminal matters, such as consumer disputes, labor issues and divorce cases. To fully apply the methodology to victims of crime, however, key differences between these two groups must be established. Once these distinctions have been made, the methodology can be adapted for criminal procedures.

Offenses of a sudden, violent nature can take away the normal sense of order victims knew before the crime occurred (Achilles & Zehr, 2001; Janoff-Bulman, 1985). Normal coping mechanisms are harder to carry out, making it difficult to process impending events. Furthermore, victims feel powerless during and after the crime has occurred, in some cases for long periods of time. Isolation, distrust and issues of safety come to the forefront. These feelings also may surface among victims of ongoing abuse, for example domestic violence

¹³⁴ The indicators that will measure satisfaction are applied for each relevant legal actor – the police, prosecutor and judge. While some research has supported the possibility of victims distinguishing between each stage / legal actor (see Fleury, 2002), other findings suggest there is much difficulty for victims to make this distinction. (see Klerx & Pemberton, 2009). This research will assume it is possible to some extent based on the specificity of the questionnaire items.

victims. While much research has distinguished among different categories of crime (i.e. rape, incest, burglary) , evidence does exist that certain reactions are common among all victimization, for example confusion, disruption and shock (Janoff-Bulman, 1985). In this state of uncertainty and despair, victims often enter their search for justice.

During a victim's path to justice, he or she will go through many of the same experiences as users travelling proceedings that lie outside of the criminal sector. These experiences, linked to the costs, quality of the procedure and quality of the outcome, will be elaborated later. What will be seen are that many similarities exist between the two groups¹³⁵. At the same time, however, victims of crime can be distinguished from non-criminal litigants in several ways. First, victims face several emotions that are experienced to a lesser extent or not at all by other users. These emotions are intensified by the nature of criminal proceedings. Second, victims are represented by the state in criminal proceedings. Third, the nature of the victimization may seriously impact the recovery of the victim, suggesting a long-term concern and a need to emphasize the future. Fourth, the issue of privacy surfaces during procedures for victims of crime. Finally, specific categories of victims may suffer consequences due to the structure of criminal proceedings.

Emotions resulting from victimization include anger, fear, frustration, confusion, guilt, self-blame, shame and sorrow (Young, 1993). These emotions continue during justice proceedings. Fear during procedures is often due to fear of retaliation (Felson, Messner, Hoskin, & Deane, 2002; Singer, 1988) or confronting the offender, both in and around the court (Ellison, 1999). Emotions arise due to the nature of court proceedings which result in victim-offender confrontation. Furthermore, feelings of stress, anger, frustration, shame, disappointment and self-blame may all arise or intensify during the procedure. While non-criminal litigants will also experience many of these emotions, this is likely to occur to a lesser extent.

Representation by the state has some consequences for victims. In some cases, a lack of involvement arises which has repercussions on feelings of control and understanding of the proceedings. The victim has often been referred to as the 'forgotten party,' (Dickson, 1983) although this status is improving, for example through the use of victim impact statements (Wemmers, 2005). Furthermore, as the crime is committed against the state, recognition of the harm to the victim done may be lost. State representation may provide less room for the victim's wishes to come to the forefront and for validation of worth within the community. At the same time, positive implications may result when authorities are involved, as the responsibility and burden are not left to the victim.

Due to the nature of the crime, victims often face difficulties with their recovery and ability to move forward. The criminal procedure, through a process of re-victimization, may further hinder this recovery. As a result, criminal proceedings must take the issue of coping and adjustability into account, understanding that long-term, life altering factors exist. Restorative justice, as will be discussed, has made significant improvements to this predicament, as it deals with "the aftermath of the offense and its implications for the future" (Marshall, 1999).

With regard to victim privacy, the publicity of the offense itself may have implications for the victim. In sexual offenses, victims cite a fear of attached stigma as a reason for non-reporting (Bachman, 1998). In addition to family and friends, this stigma may extend to the larger community and the media. Additionally, the set-up of

¹³⁵ Research has found that users in civil and administrative matters face stress related ill health, loss of income, failed confidence and relationship breakdowns (Pleasence, Balmer, Buck, Smith, & Patel, 2007), suggesting that remedies to these conflicts may also be detrimental. In a study of civil litigation harms, delay, adversarialization, retraumatization loss of privacy and a violation of boundaries were all mentioned as issues a litigant may face when accessing justice (Gutheil, Bursztajn, Brodsky, & Strasburger, 2000). A study of personal injury victims maintains that desires and experiences of these individuals include concepts such as recognition, the need to know what happened, acknowledgment of the other party and secondary victimization, suggesting experiences are very comparable (Akkermans & Van Wees, 2007).

the procedure may not fully respect the victim's private life, i.e. (cross)examination in sexual offenses¹³⁶. The personal nature, and sometimes seriousness, of the offense require a sensitive attitude towards victims of crime.

Specific victims of crime, namely victims of sexual offenses and domestic violence, may face several intricacies due to the set up of the procedure and the victim-offender relationship. For example, regarding the procedure, rape victims must deal with the issue of victim consent (Wallach, 1996). In truth-finding processes, inappropriate means by one party may be used to extract this information from the other party. Additionally, the complexity of the victim-offender relationship in domestic violence cases may have consequences for the quality of family life (i.e. loss of breadwinner if offender is incapacitated).

The final theme fundamental to this analysis is the diversity in victim needs and desires. While this concern will be reflected upon throughout the paper, an emphasis should be made on this problematic issue. The lack of uniformity can be linked to the inability to make wide generalizations concerning victims of crime and their justice desires. Again victims of domestic violence can serve as a good example. As will be seen, some practices in restorative justice settings, such as apologies, the community's role and gaining information are often inappropriate for domestic violence victims (Hopkins, Koss, & Bachar, 2004).

The defining characteristics of crime victims discussed will be later reflected in the development of the adapted framework. As other users of justice also face many of the issues similar to those of crime victims, we cannot conclude any sort of exclusivity of these variables to criminal procedures. This comparability is reflected in the consistency of key concepts used in measuring a path to justice. All users have legal needs. The paths they travel share common characteristics, including what is important along the way. Therefore, it is important to reiterate that this analysis does not attempt to argue that these elements are solely pertinent to crime victims, but other users of justice may encounter these issues as well.

B. Existing Studies

Victims report positive experiences with the police under several circumstances. This first contact is an opportunity to receive support, information and to give one's story (J. Shapland, 1983). These factors are important to victims when interacting with police. Coupe & Griffiths (1999) focused on the police and victim satisfaction with burglary investigations. In this instance, it was found that when police properly take a statement and make a serious effort to apprehend the offender result in more positive evaluation of police encounters result (Coupe & Griffiths, 1999; Joanna Shapland, Duff, & Willmore, 1985). With the focus on rape, victims may describe negative experiences when they feel the police or other legal authorities do not believe them or that blame of the victim is attached to the crime (Campbell & Raja, 1999; Holmstrom & Burgess, 1983; Regan & Kelly, 2003; Spohn, Beichner, & Davis-Frenzel, 2001). In a study examining police concern, Norris and Thompson (1993) found that feelings of alienation was a likely consequence when there were low levels of concern of criminal justice authorities. Information from police can also lead to higher levels of satisfaction (Allen, Edmonds, Patterson, & Smith, 2006; Ten Boom & Kuijpers, 2007)

Research indicates that victims tend to be less satisfied with the prosecutor when compared to the police (Frazier & Haney, 1996; Koolen, van der Heide, & Ziegelaar, 2005). Similar to experiences with the police, victims are satisfied when they are treated with more respect and without victim-blaming attitudes and are listened to by the prosecution (Campbell, Wasco, Ahrens, Sefl, & Barnes, 2001; Mills, 1999). Again, the common themes of participation and information are found in research of prosecutors and victim satisfaction (Ten Boom & Kuijpers, 2007). As prosecutors may often be the final decision maker by dropping or pursuing a case, their adherence to victim desires may affect satisfaction with the outcome. Making biased decision

¹³⁶ Cross-examination is characteristic of adversarial systems. Therefore, this cannot be generalized to all jurisdictions.

based on factors embodying the “ideal” rape victim can lead to dissatisfaction (Spohn et al., 2001). Fleury (2002) studied victims on a more systematic level, measuring both the process and the outcome, including the police response, handling by the prosecutor, the court process and the court outcome.

Campbell & Raja (1999) researched rape victims via the perspective of mental health employees, offering insights into one particular phenomenon; secondary victimization. Other revictimizing attitudes with regard to medical professionals were measured by interviewing rape victim advocates (Maier, 2008). Victim blame among these professionals has also been cited as traumatizing behavior for victims (Campbell, 2005).

In research focusing on restorative justice methods, factors affecting victims’ overall perceptions included a lack of fear, telling one’s own story, avoiding direct confrontation and social acknowledgment and support (Herman, 2005; Koss, 2006). The conditions surrounding the outcome of a given procedure can also be rated as favorable or unfavorable. In some cases, victims want to have control of these decisions while other times they prefer a more passive role (Konradi & Burger, 2000). When studying victim desires regarding the disposition – or the outcome – of apprehended offenders, it was found that victims are also concerned with the recidivism of offenders, both towards themselves and the society at large, retrieval of compensation, and reintegration of the offender (Heather Strang & Sherman, 2003).

Up until now, the characteristics of crime victims that set them apart from non-criminal users of justice have been identified. Furthermore, the research on crime victims and their experiences has been examined. At this point, the analysis turns to the actual measurement instrument and its surrounding framework.

II. Cost Variables

Gramatikov (2008) outlines a framework for measuring the costs of justice. When reviewing the research on barriers to justice, individual costs were aggregated into three larger groups: monetary, opportunity and intangible costs. Costs are often weighed against perceived probability of success and, in the case of high costs, may often dissuade a user from entering into a legal dispute.

Monetary costs may take the form of legal fees, but also indirect expenses such as transportation and day care costs. When attending procedures, users may lose money due to missed work. Time spent is also a cost category and may be increased as a result of court delays, particularly in more serious criminal cases. Finally, emotional (intangible) costs such as stress can result from justice proceedings. Again, each of these costs will differ largely on the legal problem under study and the consequent procedure.

Table 1. Cost Indicators (Existing Framework)

Monetary, out-of-pocket costs
Money lost due to attending process
Time
Stress and other emotional costs

A. Cost Indicators for Victims

For victims of crime, the costs are similar to those discussed above. While in some cases (i.e. criminal court with no private legal representation) monetary costs are not at the forefront of concern, these out-of-pocket expenses may still hinder certain individuals. Time spent and money lost due to attending the procedure also

apply to the situation of victims. Schwartz (1975) distinguishes between two types of costs of delay: losses occasioned by the delay (value foregone through idleness) and degradation (implications for the self of being kept idle). In a comprehensive study on rape victims and their court experiences, delay led to both of these costs (Holmstrom & Burgess, 1983). Losses included the energy consumed, which wore the victim down, memory loss of the incident and actual monetary and time costs for victim and family/friends. Degradation included a sense of loss to the self, and was voiced more explicitly by the victims. Additionally, delay of cases may lead to further violence, as may be the case in non-emergency protection orders, or cause the victim to drop the case.

Emotions may include, for example, fear, frustration or disappointment (also from court delays), self-blame and anxiety. As was mentioned earlier, costs that result from the victimization persist during the procedure and may be heightened as a result of the process. These emotions are experienced as a 'secondary victimization.'

Secondary victimization, defined as the "unjust violations of entitlements claimed by victims after having suffered a primary harm or loss," focuses on negative social or societal reactions, often by the criminal justice system (Montada, 1994). According to Montada, within each of the three broad fields of justice (distributive, retributive and fairness), principles of justice and principles of fair procedures emerged in decision-making processes. When one of these principles is violated, a victimization of others may occur.

Secondary victimization may be associated with inappropriate questioning or comments and other responses by legal institutions or legal actors (Brienen, Hoegen, & Global Law Association., 2000; Campbell & Raja, 1999) This issue is already given attention throughout the questionnaire with indicators measuring interpersonal justice. Other factors may also play a role. With regard to the outcome, a disproportionate punishment or an acquitted offender may lead to re-victimization by the criminal justice system.

To operationalize this phenomenon, five questions will be employed from Uli Orth's study (2002) examining crime victims' experiences in the criminal justice system. The indicators will measure the effect of the proceedings on the respondent's ability to cope¹³⁷, self-esteem¹³⁸, optimism¹³⁹, trust in the system¹⁴⁰ and belief in a just world¹⁴¹. These psychological changes measure the impact of criminal proceedings on victims.

Table 2. Secondary Victimization. Adapted from Uli Orth (2002)

Indicator
Ability to cope
Self-esteem
Optimism
Trust in legal system
Faith in a just world

¹³⁷ How the proceedings affected the victim's ability to cope with the crime

¹³⁸ How the victim's self-esteem was impacted by the proceedings

¹³⁹ How the proceedings effected how optimistically the victim views the future

¹⁴⁰ How the proceedings impacted the victim's trust in the legal system

¹⁴¹ How the victim's belief in a just world was influenced by the proceedings

In addition to costs that can be generalized to all victims, several costs may arise for certain categories of crime. For example, domestic violence victims may face wrongful arrests, loss of partner income which they may rely on and/or separation from children. Dual arrest rates are increasing as both a result of the actions of victims themselves and as a result of mandatory arrest policies. In some jurisdictions, the criminal justice system sometimes fails to properly distinguish between the motivations, such as self-defense, and consequences of arrest of domestic violence victims. Although guidelines are being established in certain jurisdictions requiring police to arrest only the primary batterer, research suggests that this is not always the case (Miller, 2001). Another issue dealing with domestic violence victims, primarily those belonging to the lower class, is the loss of income when the offender is arrested. When victims solely want immediate protection, they are often faced with new dilemmas when their only source of income has been taken away [citation]. Finally, domestic violence victims have to face the possibility of losing their children. The different rules found in jurisdictions will play a role in the likeliness of mother and child separation, for example removing the abuser rather than the child as is done in some courts. Deceitful custody tactics furthermore may be a form of retaliation of the abuser (Reichler and Erickson, 2003).

Table 3. Costs for Crime Victims – Specific Categories

Indicator
Dual arrest – <i>Domestic violence</i>
Lost breadwinner – <i>Domestic violence</i>
Children taken away from victim – <i>Domestic violence</i>

III. Quality of the Procedure Variables

The complexities of justice costs, both immaterial and material, have been demonstrated above. Turning to the procedure, the perceptions users have of their encounters with legal proceedings are formed as a result of how they are treated and whether or not a procedure is fair. The second pillar of the framework – the quality of the procedure – is perceived as fair and satisfactory if it meets certain criteria. Klaming and Giesen (2008) developed a measurement for the quality of the procedure under the Access to Justice framework by reviewing literature on procedural fairness.

People are interested in the procedure used to derive the solution, not solely the solution itself (Lind & Tyler, 1988). Procedural justice holds that in order for users to view a procedure as fair, the following criteria must be met: decision and process control (voice)¹⁴², consistency, bias suppression, accuracy, correctability, ethicality¹⁴³ and trustworthiness (Leventhal, Karuza, & Fry, 1980). When victims are treated fairly, their satisfaction with the criminal system rises (Wemmers, van der Leeden, & Steensma, 1995). Informational justice, the extent to which users are provided with explanations and justifications regarding the procedure and outcome, is operationalized as honesty, justification of the procedure, reasonable justification, timely

¹⁴² As the state is against the offender rather than the victim, victim participation is sometimes diminished and can have consequences on satisfaction. Methods such as auxiliary prosecution and victim impact statements do provide victims with more decision and process control (Erez & Bienkowska, 1993; Wemmers, 1998, 2005).

¹⁴³ The ethicality indicator has been removed for practical reasons – difficulty in sufficiently operationalizing the indicator at a level which respondents can understand.

justification, and clarification of the justification if necessary.¹⁴⁴ Interpersonal justice is attained when people are treated with politeness, propriety and respect, which comprise the three indicators measuring interpersonal justice.¹⁴⁵ The relevant indicators are shown below in Table 2.

Table 4. Quality of the Procedure Indicators (Existing Framework)

Justice Type	Indicator
Procedural Justice	Process control
Procedural Justice	Decision control
Procedural Justice	Consistency
Procedural Justice	Bias suppression
Procedural Justice	Accuracy
Procedural Justice	Correctability
Informational Justice	Honesty
Informational Justice	Justification of procedure
Interpersonal Justice	Politeness
Interpersonal Justice	Propriety
Interpersonal Justice	Respect

A. Procedural Justice Indicators for Victims

A significant body of research exists on procedural justice for victims regarding their experiences with police, prosecutors and judges (Erez & Tontodonato, 1992; Paternoster, Bachman, Brame, & Sherman, 1997; Tyler, 1988; Tyler & Folger, 1980; Wemmers et al., 1995). What is often found is that negative outcomes are still agreeable when they are results of fair procedures. Victims who perceive treatment by criminal justice authorities to be fair are more satisfied than those who believe the opposite to be true (Tyler & Folger, 1980; Wemmers, 1998). This assessment of fair treatment is the result of those procedural indicators shown above. At the same time, however, other relevant factors come into play when evaluating victims experiences with the procedure: avoiding one's offender and privacy during the process from the offender and the public/media.

In some situations, the nature of the victimization may be so serious that requiring a victim to face the offender would be immoral. Unwanted confrontation with the offender can be perceived as unethical and may lead to higher levels of secondary victimization. Therefore, ethicality can further be operationalized – for victims of serious crimes – as the opportunity given to the victim to avoid his or her offender. Various countries allow for this via the use of separate waiting rooms or having the offender leave the courtroom during the victim's testimony (Brienen et al., 2000).

Bies (1993) argued for the relevance of privacy to procedural justice theory, stating that privacy is an issue when 'people's moral expectations about control over their personal information are violated.' In organizations, he identified seven factors pertinent to procedural justice. The factors are as follow:

¹⁴⁴ Victims often have little access to information, leading to dissatisfaction (Joanna Shapland et al., 1985). The measure for informational justice has been reduced to items investigating received information on rights and the procedure.

¹⁴⁵ Improper questioning/comments and disrespect is often a problem for crime victims (see (Holmstrom & Burgess, 1978; Martin & Powell, 1994).

authorization of information disclosure¹⁴⁶, advance notice of information gathering¹⁴⁷, types of selection procedure used for information gathering¹⁴⁸, relevancy of information used in decision making¹⁴⁹, intrusiveness of the information-gathering procedure¹⁵⁰, target of information disclosure¹⁵¹, and outcome of information disclosure¹⁵².

Of the factors mentioned above, several apply to legal settings.¹⁵³ As was discussed earlier, privacy is an important issue for victims of crime during proceedings. While this hold true for non-criminal users, the extent to which privacy is desired is likely to be smaller. In legal settings, the following privacy factors are applicable to victims of crime: authorization of information, intrusiveness of information gathering procedure¹⁵⁴ and target of information disclosure.

When victims report a crime, they are risking the chance of the case becoming a public matter. Authorization of information disclosure is a concern during court proceedings when files are public and personal information is shared during testimonies. The principle of publicity governing trial proceedings and the administration of a fair trial for the accused, however, is a necessary element to maintain. Alternatives do exist when additional suffering should be prevented (i.e. secondary victimization) or the publication of personal information may endanger the victim's safety. For example, privacy can be attained via holding proceedings in camera, implementing restrictions on disclosure of information such as the victim's identity and restricting press coverage and exposure to the public. Other jurisdictions may adhere to the principle of secrecy, which prohibits certain information from reaching the public (Brienen et al., 2000). Dispensing information to the media and other members of the public is consistent with the concept of 'target of information disclosure,' which asserts that the disclosure of information to strangers or outsiders may be considered an invasion of privacy when compared to insiders.

Privacy from the offender is also important in crime of a serious nature and can be distinguished from privacy from the public, as victim may have one but not the other. In both cases, however, authorization of information disclosure is relevant. Victims may not want offenders to have access to certain information, either regarding the crime (i.e. victim impact statements that may tell how the victim was affected) or their personal information. Often, in an attempt to protect offender rights, information about the victim is available to the offender. Laws do exist which prevent the offender from obtaining a victim's personal information. Other measures such as protection orders and information on offender release exist.

¹⁴⁶ Degree to which one controls the access of others to personal information

¹⁴⁷ Advance notice prior to any decision or testing procedure, gives individuals more chance to control information

¹⁴⁸ Whether or not selection procedure is random

¹⁴⁹ Information that appears unrelated or indirectly related to the outcome

¹⁵⁰ The extent to which the information gathering procedure is intrusive or invasive to individuals

¹⁵¹ Persons receiving the information

¹⁵² Cost-benefit analysis in assessing outcomes as the result of providing intimate information

¹⁵³ Bies, and earlier Leventhal, discussed privacy as a procedural justice element in the context of organizational justice. This framework also utilizes other theories derived from organizational justice, suggesting that here too, privacy can be applied to legal settings.

¹⁵⁴ Intrusiveness of the information-gathering procedure is covered in the current interpersonal indicator of propriety, which examines the extent to which victims were asked improper questions.

B. Interpersonal Justice Indicators for Victims

Interpersonal justice explains victim experiences in regard to respect, politeness and propriety (lack of inappropriate questions/comments). One additional concern arises during justice proceedings: victim-blaming. Victim blaming has implications for secondary victimization and the ability to cope as research has found that negative societal reactions can harm the victim's adjustment (Campbell, Ahrens, Seff, Wasco, & Barnes, 2001; Davis, Brickman, & Baker, 1991; Ullman, 1996b).

Particularly for offenses of violence against women, victim blaming attitudes exist among the general public (Bell, Kuriloff, & Lottes, 1994; Luginbuhl & Mullin, 1981), but also within the criminal justice system (Campbell, 1995; Feldman-Summers & Palmer, 1980; Stewart & Maddren, 1997). The latter has implications for the quality of the procedure. Comments by the police, prosecutor or judiciary that insinuate fault of the victim will not provide victims with a feeling of justice. Furthermore, both groups' negative behaviors may be detrimental to the adjustment and healing of the victim (Ullman, 1996a).

C. Restorative Justice Indicators for Victims

Restorative justice, relevant to both the procedure and the outcome, emphasizes the reparation of the harm that was caused by criminal behavior. Dialogue is a central component to restorative justice, indicating that some elements may overlap with procedural justice. Christie's (1977) well-known classification of conflict as property suggests that victims have lost their right to participate and that restorative justice methods can remedy this problem.

Restorative justice research has concluded positive findings regarding perceptions of fairness in the manner of which cases were handled, for both victims and offenders. For example, Umbreit (1994) found that 83% of victims and 89% of offenders who used mediation felt they were treated fairly in this regard. The difficulty with restorative justice is that its place in the process is less clear cut than, for example, retributive justice which solely focuses on the outcome. Many of the goals of restorative justice are achieved through the actual procedure, rather than the outcome, as is often found in methods such as victim-offender mediation or family group conferencing, suggesting a process of restoration (Morris & Young, 2001)¹⁵⁵. During this process, victims have several desires which fall under restorative principles. They are as follows: recognition, the opportunity to receive an explanation and voice towards the offender.

Victim recognition as the harmed individual is an important element of restorative justice and a significant goal of restorative proceedings (Achilles & Zehr, 2001). Although a desire for victim status can by no means be generalized to the entire population, as many victims want exactly the opposite, many individuals do prefer that the harm done to them by the offender be known.¹⁵⁶ Young (1993) discusses validation, or recognition, of the harm as the starting point for the procedure.

Uncertainty surrounding the crime – whether or not it was random, why the offender acted as s/he did and other details – can leave victims frustrated and in search of closure and understanding (Winje, 1998). Under these circumstances, a face to face encounter with the offender may lead to insights surrounding the criminal act, including why it was carried out. This particular restorative indicator of having the opportunity to ask the offender for an explanation of what happened may lead to higher levels of victim satisfaction (Umbreit, 1994). The opposite may also be true: receiving an explanation (or an excuse) may lead to lower levels of satisfaction (Allan, Allan, Kaminer, & Stein, 2006; Pemberton, Winkel, & Groenhuijsen, 2007).

¹⁵⁵ There is a debate on restorative justice and process vs. outcome (see (Crawford & Newburn, 2003)

¹⁵⁶ Recognition is reflected in many of the other indicators. For example, recognizing victim status involves respectful treatment, and other attitudes that relay to the victim that his or her situation is understood, i.e. victim blaming.

Restorative justice, in an effort to repair the harm and place victim needs in a central position, makes a distinction between voice towards the various criminal justice agents and voice towards the offender. The expression of feelings and views towards the legal procedure and actors is covered in procedural justice. Attention must also be given to address expression towards the offender. This notion of victim expression towards the offender is an underlying principle of restorative justice, as dialogue is essential and expression may be therapeutic (Umbreit, 1994). An evaluation of restorative justice conferences in Australia known as RISE (Reintegrative Shaming Experiments) was conducted and found that almost two-thirds of the victims felt that the ability to express feelings directly towards the offender was important (Heather Strang & Sherman, 2003).

Offender accountability, greater voice and participation, understanding of the facts, mediation, and restitution follow the principle of individual conflict rather than involving the state. (Galaway & Hudson, 1996). Although victim-offender mediation will undoubtedly perform well in regard to these principles, measuring the traditional criminal justice system could also produce favorable ratings on these variables. The drawbacks should not be overlooked. Dissatisfaction can result, among other reasons, if the victim felt coerced into the procedure, particularly if it was the only way they felt they could be compensated, if the apology by the offender seemed superficial or if the victim felt the offender's rights were given more considerations than his or her own (Umbreit, 1994).

Before exploring the structure of relevant outcome variables for crime victims in and delving into the final pillar of the framework in the next section, an overview should be offered of the second pillar. Four justice theories are relevant to the quality of the procedure: procedural justice measuring fairness, interpersonal justice measuring police treatment, informational justice measuring offered information and explanation, restorative justice measuring restoration of harm.

Table 5. Additional Procedural Indicators for Crime Victims

Justice Type	Indicator
Procedural Justice	Privacy from Public/Media
Procedural Justice	Privacy from Offender
Procedural Justice	Ethicality - Avoiding Offender
Interpersonal Justice	Victim blaming
Restorative Justice	Voice towards offender
Restorative Justice	Recognition
Restorative Justice	Victim Opportunity to Receive Explanation

Quality of the Outcome Variables

Regarding the quality of the outcome, justice theories are again utilized, but are less straightforward compared to the quality of the procedure indicators. This ambiguity is due to the overlapping indicators that result from the various outcome justice theories. After analyzing the pertinent research and literature, Verdonschot et. al. (2008) found several theories discussed below, which encompass a user's perception of the quality of the outcome. This summary serves as a base for further development in the realm of criminal proceedings.

Distributive justice addresses how a society should allocate its resources among individuals with competing needs. While distributive justice has varying views and can be interpreted as an umbrella theory for all

outcome theories, this study operationalizes distributive justice in terms of needs (resources should be allocated according to people's needs¹⁵⁷), egalitarianism (resources should be allocated equally across people while needs are disregarded) and equity (an outcome should reflect one's efforts). The following criteria for distributive justice have been deduced to measure outcome satisfaction: equity, equality and need. As mentioned, restorative justice is also relevant to the quality of the outcome. In this case, important measures include reparation of monetary¹⁵⁸ and emotional harms and reintegration. Like restorative justice, informational justice elements are applicable to both the procedure and the outcome. Informational justice indicators are justification of the outcome and satisfaction with that explanation. Similar to restorative justice is transformative justice, which extends past the criminal justice system. The transformative indicators are as follow: improved relationships and outcome favorability. Formal justice, which stipulates that adjudicative bodies must afford similar cases like treatment, is another indicator of the quality of the outcome. These indicators are based upon formal equality, which encompasses these ideas of transparency and comparability. Formal justice indicators are the ability of users to compare their cases with comparable others and the similarity of these outcomes as a result of clear legal commands. Finally, legal pragmatism, rather than looking at theory of truth or theory of meaning, focuses on facts and consequences. While the framework of the study is based on theory, the outcome can be evaluated in terms of both justice and pragmatism. The functional aspect of the outcome is also vital in the analysis (i.e. whether a outcome is enforceable may not deal with justice per se, but is important for pragmatic purposes). Legal pragmatism indicators include a pragmatic outcome and that consequences were taken into account (Verdonschot et al., 2008). The indicators are summarized in Table 3.

Table 6. Quality of the Outcome Indicators (Existing Framework)

Justice Type	Indicator
Distributive Justice	Equity
Distributive Justice	Equality
Distributive Justice	Needs
Restorative Justice	Reparation monetary harms
Restorative Justice	Reparation emotional harms
Restorative Justice	Reintegration
Informational Justice	Outcome justification
Transformative Justice	Improved relationships
Transformative Justice	Outcome favorability
Legal Pragmatism	Outcome solved problem
Legal Pragmatism	Instrumentalism – enforceability
Formal Justice	Formal equality

One point should be stated with regards to the outcome quality and victims of crime. A path to justice, earlier defined as a “commonly applied procedure which users address in order to cope with their justice needs,” is

¹⁵⁷ While 'equality' can also be interpreted as equality across people in comparable cases, here it is seen as equality between parties. The former is included in the formal justice indicator, formal equality.

¹⁵⁸ Reparation of monetary harms is comparable with the principles of compensatory justice, which involves the extent to which victims should be compensated.

often less straightforward in criminal procedures. While the outcome may in fact be a restraining order, compensation, or an apology, to name a few, there is a high probability that other possible 'outcomes' have occurred along the way. For example, pre-trial detention may influence the victims feelings of safety. Or, informational justice is required at all stages, i.e. when the prosecutor decides to proceed as well as the final verdict of a case. The end of the path includes a 'final decision' by a neutral, although the various decision-making stages a victims faces suggests a need for a somewhat amended definition to extend to other outcomes.

A. Distributive Justice Indicators for Victims

Rather than taking the distributive stance in measuring equality¹⁵⁹, a more restorative perspective can be applied to crime victims, in terms of restoring the (financial) harm. The question is in contrast to the retributive indicator which examines to what extent the victim received what he or she deserved. Measuring the extent to which the user feels his or her contribution to the problem was taken into account in the outcome and the same of the offender's contribution may be problematic. The phrase "contribution to the problem" when targeting victims of serious crime is not an appropriate measure. "Contribution" implies victim accountability, and, as mentioned earlier, victim (self) blame is an often cited concern when dealing with the justice system as these feelings may surface among victims (Cascardi & O'Leary, 1992; Gray, Palileo, & Johnson, 1993). Furthermore, measuring the offender's contribution may be somewhat ambiguous as the victim may perceive this to be the issue under question, and the sole reason for the trial or charges in the first place. Rather, equity in the sense of rebalancing the inequitable position resulting from victimization, can be characterized as a retributive behavior.

B. Retributive Justice Indicators for Victims

Retributive justice aims to avenge the harm that was caused and is not concerned with the future consequences of punishment. The concept of retribution is related to equity and the "confirmation of societal values violated by the crime" (Orth, 2003). The notion of proportionality and 'just deserts' suggests that the appropriate punishment must be inflicted on the perpetrators for their wrongs in inflicting the original harm (Wenzel & Thielmann, 2006).

When an offender commits a crime, a balance is disturbed between the offender and the victim and community. The offender has taken advantage of the victim and society and assumes a superiority stance. For a restoration of the balance, punishment is needed. In this way, the transgression is reversed. This is achieved by a degradation of the offender relative to the victim and society (Wenzel & Thielmann, 2006). Research on retribution and crime victims is contrasting, showing that victims may or may not desire retribution depending on several factors such as emotional proximity and intent of the offender (Gromet & Darley, 2009; Heather Strang & Sherman, 2003; van Prooijen, 2009).

C. Utilitarian Indicators for Victims

A distinction can be made between the just deserts perspective and the utilitarian perspective (Carlsmith, Darley, & Robinson, 2002). While the deservingness approach punishes the offender in a proportionate way and is not future-oriented, the utilitarian method asserts that social harmony can be attained via the prevention of future harm. Therefore, punishment is justified if it minimizes the possibility of future offenses.

¹⁵⁹ "To what extent did you and the other party pay or receive an equal share in the outcome?"

Based on a cost benefit analysis, the idea of pleasure exceeding pain will result in criminal acts (Bentham, 1843). The notion of deterrence within the utilitarian theory contributes to the framework.

In addition to deterrence theory, incapacitation theory is also concerned with the prevention of crime (Carlsmith et al., 2002). After a crime has been committed, the simplest option for achieving prevention of future crimes is incapacitation. A main goal is to restrain a person who has proved himself dangerous as a result of the past crime from carrying out any subsequent criminal acts. While this restraint is often in the form of prison sentences, one could also view a restraining order for domestic violence and stalking victims as a form of incapacitation.

Protection from the offender is an often cited victim need and subsequent reason for which victims contact the police (Joanna Shapland et al., 1985; Skogan, Davis, & Lurigio, 1990), and is a by-product of deterring (Hart, 1996) and incapacitation measures. For domestic violence victims, obtaining a restraining order as opposed to the police refraining from pressing charges can account for the large discrepancy in satisfaction with the outcome that is likely to result. At the same time, however, victims often prefer immediate protection above sentencing the offender to jail or intervention programs, as they would no longer be able to support the family (Hotelling & Buzawa, 2003a). In these cases, incapacitation will not lead to victim satisfaction with the outcome. Recent mandatory arrest laws and no-drop policies may give the feeling of safety, but disagreement further in the process may lead to dissatisfaction (Finn & National

Criminal Justice Reference, 2004).

Restorative Justice Indicators for Victims

In addition to the process-oriented principles of restorative justice, several outcome indicators are equally relevant to crime victims. The first part of the paper discussed the need for a procedure to be focused on the future, as victims may have experienced traumatizing events and emotional injury. The restorative justice process has proven to be efficient in restoring the emotional harms of victims (Umbreit, 1994). The reparation of harms is significant to victims of crime (Heather Strang & Sherman, 2003). Additionally, restorative justice stresses the need for offender reintegration when formulating an appropriate outcome (Braithwaite & Mugford, 1994). In addition to those indicators explained earlier (see Table 3), several principles of restorative justice are applicable to the outcome: receiving an apology/offender remorse, alleviation of fear, acknowledgment of harm, offender accountability and closure/the ability to move forward.

Emotional repair may be enhanced if the setting of the procedure is conducive to the possibility for an apology or an expression of remorse. The offer and acceptance of an apology may help to produce a restored state and begin the reparation of emotional harms (Heather Strang & Sherman, 2003), yet this is not always necessary (Struthers, Eaton, Santelli, Uchiyama, & Shirvani, 2008). This outcome – offender apology – can help to attain restorative goals. Apologies allow the offender to communicate ‘moral inferiority.’ If the victim chooses to do so, he or she may accept the effort made by the offender leading to a balance of status between the two (Petrucci, 2002). As a result, control is in the hands of the victim, offering a form of empowerment in proceedings.

Emotions as a result of the process are assessed as a cost variable. The respondent, however, is requested to disregard the outcome in this evaluation. Certain paths have a direct effect on mitigating negative emotions; therefore, an outcome variable of this alleviation is significant. One in particular is of interest in a comparison between restorative and criminal justice settings for victims of serious crimes: fear. A sense of security, restored by the alleviation of fear, is argued to be one main element of restorative justice (Braithwaite & Parker, 1999). In the RISE program mentioned earlier, fear was assessed on a comparative level between the criminal justice system and the restorative conference (Heather Strang & Sherman, 2003). A significant number of

victims who were afraid and felt a sense of insecurity had a reduction in fear after the conference (38% before the conference, 14% after the conference). In a minority of cases, fear is also likely to decrease if the victim has the opportunity to hear that he or she was not targeted by the offender and rather, the criminal act was random. This alleviation of fear is possible as a result of the opportunity a victim has to ask the offender about the details of the crime – an essential restorative indicator.

Similar to the recognition indicator discussed earlier, acknowledgment of the harm may also be reflected in the outcome. Social acknowledgment has been defined as “a victim’s experience of positive reactions from society that show appreciation for the victim’s unique state and acknowledge the victim’s current difficult situation” (Maercker & Müller, 2004). These reactions can be extended to those responses of criminal justice authorities and the measures taken by them. The outcome itself may signify an appreciation of the victim as someone in a difficult state of suffering. For example, restraining orders may be a violation of an offender’s right to property. In this case, however, the outcome recognizes the victim’s current state and puts his or her safety before the offender’s property rights (The Advocates for Human Rights, 2008). Even for retributive measures within the criminal justice system, punishment can serve as a form of recognition of victim status (Orth, 2003).

In the criminal justice system, offenders are given little opportunity to acknowledge their responsibility. Restorative justice, however, is concerned with offender accountability (Zehr, 2002). Rather than simply accepting the punishment given, offender accountability entails an understanding of the impact of the offense and a contribution to improving the situation (Umbreit, 1998). In addition to restorative justice procedures, specialized domestic violence courts are also successful due to their emphasis on offender accountability via the use of batterer intervention programs (Gover, Brank, & MacDonald, 2007).

A final objective of restorative justice is that the outcome provides the victim and the offender with a sense of closure (Zehr, 2002). Restorative justice procedures are beneficial in reaching this goal, offering victims a means of moving forward with their lives. Other justice procedure may also provide closure, particularly when the outcome meets the desires of the victim.

Table 7. Additional Outcome Indicators for Crime Victims

Justice Type	Indicator
Retributive Justice	Just deserts
Utilitarian	Deterrence
Utilitarian	Incapacitation (protection)
Restorative Justice	Opportunity for remorse/apology
Restorative Justice	Alleviation of fear
Restorative Justice	Outcome acknowledged harm
Restorative Justice	Opportunity to hold offender accountable
Restorative Justice	Closure/forgiveness

Removed Outcome Indicators

Distributive Justice	Equality (in terms of equal shares of outcome between parties)
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V. Characteristics of the Crime, Procedure and Victim

In addition to the cost, procedure and outcome variables, the A2J methodology must consider several characteristics that serve as control variables. Descriptive conclusions can be made regarding the costs and quality of a given path solely on the information discussed above. Accounting for the following variables, however, can lead to valuable insights into other factors influencing victim experiences during their paths to obtain justice. These variables are summarized in Table 4.

The framework includes an evaluation of the defense attorney, primarily his or her levels of interpersonal justice. The medical professional may also have an impact on overall satisfaction with the procedure (Holmstrom & Burgess, 1978, 1983). Procedural qualities are reflected in the concepts which measure whether victim preferences of charges and going to court were adhered to (Buzawa & Austin, 1993; Hoyle & Sanders, 2000; O'Sullivan, Davis, Farole, & Rempel, 2007), which are decision and process control indicators. The presence of victim assistance is also examined for its relevance to all three pillars (Davis, Kunreuther, & Connick, 1984; Forst & Herson, 1985), for example less stress (costs), respectful treatment (procedure) and more information (procedure and outcome). Other important variables are the victim-offender relationship (Simon, 1996; Spohn & Holleran, 2001; Whatley, 1996) and the seriousness of the offense (Frazier & Haney, 1996). Both of these factors have implications for the treatment victims receive, for example as a result of credibility, the idea that the crime is of a private matter, or the trivialization of the crime due to a lack of an 'ideal' victim. These factors may impact performance on interpersonal and procedural justice indicators. Finally, the framework is dependant upon other variables concerning past experiences of the victim – previous victimization (Hotaling & Buzawa, 2003b) and previous contact with the justice system. Previous contact with the system elicits certain expectations which in turn will be met or unmet, leading to (dis) satisfaction.¹⁶⁰

Table 8. Crime/Procedure/Victim Characteristics

Indicator
Defense attorney acting appropriately (if applicable)
Satisfaction with medical professional (if applicable)
Victim preferences
Satisfaction with assistance (if applicable)
Victim-offender relationship
Offense seriousness
Previous victimization
Previous contact with system

¹⁶⁰ Other extra-legal factors may influence the behavior of legal authorities (thereby influence victim perceptions), for example, perceptions of victim lifestyle, victim conduct or the evidence in the case (see (Buzawa & Austin, 1993; Spohn & Holleran, 2001). These factors, however, often cannot be uncovered from the victim perspective.

VI. Discussion

Different procedures each have their own advantages and disadvantages. Similar paths in differing jurisdictions each have their own strengths and weaknesses as a result of local legislation. This section outlines the practical use of the methodology in terms of these two comparisons (two paths, one jurisdiction and one path, two jurisdictions).¹⁶¹

Comparison Between Possible Paths Within One Jurisdiction

Several paths exist for crime victims in resolving their problems; each option, however, comes with several advantages and disadvantages. In civil court, the victim may be more involved leading to greater levels of empowerment and liability may not be as difficult to prove to win a case when compared to criminal court. Certain costs may arise, such as the possibility of partial blame due to the outcome (Bublick, 1999) and higher out-of-pocket expenses. In a restorative justice procedure such as victim-offender mediation, or when a restorative procedure complements traditional criminal proceedings, several positive outcomes may result. Research has found that victims are more likely to receive an apology, understand what happened and receive closure, feel more secure and be involved to a greater extent when compared to the sole path of the criminal justice system (Strang and Sherman, 2003). There are limitations and restorative methods may not be applied in some cases, for example domestic violence. Some restrictions include that outcomes may lack proportionality, offenders may not be genuine and there is no true fact-finding phase (Daly, 2006). While various procedures exist, each can individually be evaluated to uncover which paths are most likely to adequately meet victim needs.

Comparison of Similar Paths Between Jurisdictions

In addition to comparisons among similar paths for victims within one jurisdiction, comparisons can also be made between paths in one jurisdiction and equivalent paths in another jurisdiction. Existing legislation in given jurisdictions plays a part in levels of quality of justice. More advanced victim rights or existence of support programs and higher subsequent levels of satisfaction can illustrate these advantages to other countries lacking these rights and support. The methodology can provide for this comparison by indicating where access to justice is insufficient or rated lower, helping countries and justice providers learn from each other.

Aggregation of the Data

Overall satisfaction is measured by what the factors victims believe to be most important and to which extent indicators may be important. For example, are victims likely to want both rehabilitation for the offender and a severe punishment in the outcome? Do victims want to avoid offenders in the courtroom or do they want to face them in victim-offender mediation to find out certain information about the criminal act? Is information regarding the procedure more important than participation? Devising classifications of victims is not an easy task; rather, in all situations, exceptions exist, prohibiting an overall generalization of what victims want. While the above literature summarizes the factors which lead to victim satisfaction, the reader must be cautious of making any simplifications. There will always be cases where an apology is futile (Allan et al., 2006) (think of the human rights or domestic violence victim) or receiving an explanation from the offender is only detrimental (think of hate crimes). Additionally, there are other considerations, for example cultural effects, particularly with regard to procedural justice perceptions (Klaming & Giesen, 2008) and what is most important to individuals.

¹⁶¹ Often, a path is not as straightforward as 'the criminal justice procedure' or 'civil court.' Rather, paths often coincide. For example, when victim-offender mediation is not used as a method of diversion, the path may take place within criminal proceedings. As a result, the victim's 'path to justice' is redefined and caution must be taken when concluding any comparable findings.

With regard to deciding what is most important to victims, an A2J Index may help to determine the significance of each indicator to crime victims in relation to the various justice theories (Gramatikov & Laxminarayan, 2009 - forthcoming)¹⁶². The instrument employs a method of attributing weights. For example, findings suggest victims are interested in being involved rather than a mere witness, being consulted about the progress of the case, given recognition for the harm they have suffered and being treated with fairness and respect by the system as a whole (Joanna Shapland et al., 1985). Research on rape victims has also found that information and understanding are the most important elements affecting ratings of the police and prosecutors (Holmstrom & Burgess, 1983). While research is available on victim needs and desires (H. Strang, 2002), generalizing should be done cautiously taking other factors into consideration (i.e. culture, personality, function goals of the victim and offender).¹⁶³

VII. Conclusion

The framework discussed in this paper has attempted to capture all variables, emotions and behaviors that affect satisfaction with a given path to justice. Important to restate is that these theories overlap and contrast with one another. The existing literature may categorize a given indicator in a different manner than done above, however both are acceptable classifications of the criteria (i.e. voice belongs to both procedural and restorative justice). The current instrument is hypothesized to effectively measure the costs and quality of a procedure and the outcome.

The beginning of the paper identified several attributes of crime victims' experiences, including the emotions they face, the involvement of the state, their sometimes difficult recovery and their dilemma with privacy. The practical use of the methodology was then briefly outlined before delving into the structure of the Access to Justice framework for victims of crime. When defining a victim's experience, three pillars – cost, quality of the procedure and quality of the outcome – are operationalized. Costs are categorized into monetary, time and intangible costs while the quality of the procedure and the quality of the outcome are operationalized in terms of various relevant justice theories and their indicators. The additional indicators applied to crime victims are centered around restoration, utilitarianism, privacy and protection and more specific aspects of interpersonal justice. Finally, several control variables are necessary to evaluate procedures as they have been documented in the past as affecting overall satisfaction.

A framework has been provided to measure the perceptions and experiences of victims of crimes in different settings regarding costs, quality of the procedure and quality of the outcome. The measurement tool and its accompanying index which prioritized the given indicators can have positive implications for evaluation, comparative research and policy suggestions in the field of access to justice.

¹⁶² A method is used (factor analysis) to derive the items which best measure the unobservable indicators. In other words, it is concluded how much process control, for example, leads to perceptions of procedural justice. While conclusions cannot specifically be drawn in terms of the most important aspects to victims, inferences can be made of how a procedure fares on perceived levels of various indicators.

¹⁶³ A more elaborate explanation of the index goes beyond the scope of this paper. Refer to Gramatikov and Laxminarayan, 2009.

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Penal Mediation and the Victim in Portugal

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Introduction¹⁶⁴

Mediation is a recent development in Portugal. It was brought to this country by private entities in the 1990s. The first experience of mediation with the Ministry of Justice's backing took place in 1997 with the creation of the Family Mediation Office (GMF), a public service promoted by the Extra-judicial Administration Directorate-General (DGAE), of the Ministry of Justice, created with a view to the extrajudicial resolution of situations of parental conflict with regard to the regulation of parental responsibilities, alterations to such responsibilities and their non-compliance, with the geographical area covered being limited to Lisbon. Subsequently, mainly as a result of 17th Constitutional Government undertaking alternative dispute resolution as their main objective¹⁶⁵, the Labour Mediation System (SML) was created by a Protocol signed on 5th May 2006 between the Ministry of Justice and several social partners¹⁶⁶, a system that would begin operating on 19th December 2006, with the task of mediating disputes arising under the scope of individual labour contracts, with the exception of issues relating to unavailable rights and accidents in the workplace. Later, the Family Mediation System (SMF)¹⁶⁷ was created, as the successor of the GMF, covering conflicts arising under the scope of family relationships, namely the regulation, alteration and non-compliance of parental responsibilities, divorce, separation of people and assets, the conversion of the separation of people and assets in divorce, the reconciliation of separated partners, the assignment and alteration of provisional or definite maintenance agreements, depriving the right to using the other partner's surname, the consent to use the ex-partner's surnames or the family's home. Both the SML and the SMF were set up in certain districts and progressively extended to the remaining territory. At present, the SML operates over the whole continent, although in the Autonomous Regions of Azores and Madeira, labour mediation is promoted by Regional bodies. The SMF covers the whole national territory.

Further to the general description of the experience of mediation in Portugal, it is important to briefly mention the Julgados de Paz (Magistrates' Courts), special courts foreseen in the Constitution¹⁶⁸ created by the Law unanimously approved by Members of Parliament¹⁶⁹. The Magistrates' Courts can assess and deliberate on civil actions up to the amount of € 5.000. From the first four Magistrates' Courts created in 2002, in 2009, this

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¹⁶⁴ This account, presented under the scope of the Victims in Europe Conference, aimed at national and foreign members of the public, identifies the majority of the diplomas and respective articles as footnotes, for the audience to better understand the text.

¹⁶⁵ Cfr. Resolution of the Council of Ministers n.º 172/2007, of 11th October, published in the *Diário da República* of 6th November.

¹⁶⁶ Specifically, the *Confederação da Indústria Portuguesa (CIP)*, *Confederação do Comércio e Serviços de Portugal (CCP)*, *Confederação do Turismo Português (CTP)*, *Confederação dos Agricultores de Portugal (CAP)*, *Confederação Geral dos Trabalhadores Portugueses – Intersindical Nacional (CGTP - IN)* and the *União Geral dos Trabalhadores (UGT)*. From the beginning of the SML's operation, 80 bodies have joined this means of mediation, namely professional associations, employers and trade unions, known at a national level.

¹⁶⁷ By Ruling n.º 18 778/2007, of 13th July 2007, by the Secretary of State for Justice, published in the *Diário da República*, II Série, of 22nd August.

¹⁶⁸ Cfr. n.º 2 of article 209 of the *Constituição da República Portuguesa (CRP)*.

¹⁶⁹ Cfr. Law n.º 78/2001, of 13th July.

figure has now reached twenty one. It must be noted that mediation in the Magistrates' Courts is not an autonomous system as in the aforementioned SML or SMF, due to it being included in proceedings at the Magistrates' Court itself.

Penal mediation first arose in Portugal as a result of an initiative promoted by the Faculty of Law of the University of Oporto (FDUP), by the Oporto Public Prosecutor's Office and the Oporto Department of Penal Investigation and Action (DIAP), designated as the "Oporto Project". In fact, the three entities mentioned signed a protocol, on 16th July 2004, with the aim of developing a penal mediation project under the scope of penal Proceedings Inquiries, in which it was possible to apply the mechanisms of diversion and consensus at that time foreseen in penal procedure law. The "Oporto Project" began on 2nd November 2004 and despite initially being restricted to cases in which it was applicable either to file the case in the event of exemption from serving the sentence¹⁷⁰ or to temporary suspend proceedings¹⁷¹, the truth is that the experience has determined the recognition of penal mediation as an autonomous institution, independent of other institutions associated to the diversion and consensus means and their respective presuppositions. Penal mediation was made known to the defendant and the complainant by letter sent by the DIAP, which, further to describing the facts that were the object of the Inquiry, explained to the recipients what it was comprised of and how the mediation process worked. When penal mediation took place, the sessions were held at the Penal Mediation Office at the FDUP¹⁷².

Penal Mediation would be fully introduced into the Portuguese Legal System by Law n.º 21/2007, of 12th June, in compliance with that set forth in article 10 of Framework Decision nº 2001/220/JAI, of the Council of Europe, relating to the victim's standing in criminal proceedings, which determines that Member States should endeavour to promote mediation in criminal cases. In accordance with the Law¹⁷³ mentioned, the Penal Mediation System (SMP) was created and its management partly assigned to the Dispute Alternative Resolution Office (GRAL). It must be highlighted that the GRAL, is a Ministry of Justice service, mainly aimed at promoting extrajudicial means of conflict resolution, and similarly to promoting access to the SML and the SMF it also promotes access to the SMP¹⁷⁴.

I. The experience of penal mediation in Portugal

1. Scope

Mediation in the criminal process can take place when criminal proceedings that have been filed are at the Inquiry stage. The crimes in question must result from private prosecution or crimes against persons or property, for which the criminal proceedings have been brought as a result of a complaint. The crime should

¹⁷⁰ Foreseen in article 280 of the Code of Criminal Procedure (CPP) and article 74 of the Penal Code (CP).

¹⁷¹ Foreseen in article 280 CPP.

¹⁷² On this matter, for example, *Breves Reflexões Sobre Mediação Penal*, Moraes, Maria Teresa Teixeira Simões, 2007, available at http://www.trp.pt/mp_trabalhos/breves-reflexoes-mediacao-penal.html.

¹⁷³ Decree n.ºs 68-A/2008, 68-B/2008 and 68-C/2008, all of 22nd January.

¹⁷⁴ The GRAL was developed under the scope of the guidelines defined by the Programme for the Restructuring of State Central Administration - *Programa de Reestruturação da Administração Central do Estado (PRACE)* and the goals of the Programme of the 17th Constitutional Government for administrative modernization and improvement of the quality of public services, pursuant to Decree-Law n.º 127/2007, of 27th April.

carry a prison sentence of up to 5 years or a fine and the offender must be 16 years of age or over. The offences that are excluded from penal mediation are those against sexual freedom or self-determination and cases in which the criminal proceedings are subject to special summary or highly summary proceedings.

Crimes eligible for penal mediation include simple assault, negligence, threat, slander, insult, trespassing private property or private peace disturbance, robbery, abuse of trust, damage, landmark alteration, fraud and usury.

As it is the Public Prosecutor who presides over the case at the inquiry stage, which is the stage of proceedings that aims to verify whether a crime took place, determine who committed it and discover and gather evidence to make a decision on the charge, it is also he who has to refer the case to penal mediation. Referral can occur in two situations. Either as a result of the Public Prosecutor's initiative, at any time during the inquiry, or when evidence that a crime took place has been gathered and that the defendant committed it, and if it is considered that this may offer an adequate response to the needs of prevention such as are felt in the case in question; or if both the aggrieved person and the defendant request mediation to the Public Prosecutor, in legally admissible cases.

Once the case has been referred to penal mediation, the penal mediator is electronically appointed from a list of previously recruited mediators.¹⁷⁵ Then, he contacts the defendant and the aggrieved person to schedule the first mediation session. During this first contact, the mediator informs the defendant and the aggrieved person of the penal mediation procedure, their rights and duties and of the nature, purpose and rules applicable to the mediation process. In Portugal, due to the fact that mediation is always a voluntary process irrespective of its nature, penal mediation can only take place with the consent of the defendant and the aggrieved person, a solution which is in force in all Public Mediation Systems promoted by the Ministry of Justice through the GRAL. Therefore, if the mediator fails to obtain the consent of the defendant and the aggrieved person, he shall inform the Public Prosecutor and criminal proceedings shall continue. Conversely, if consent is obtained, mediation sessions begin. It should be noted that despite both the defendant and the aggrieved person consenting to the mediation process, they may at any time revoke their consent.

The mediation process must generally be completed within three months, however, the penal mediator may apply to the Public Prosecutor for an extension of the time limit of up to two months (to a total of five months), when there is a strong likelihood that an agreement will be reached. If an agreement is reached, it is transmitted to the Public Prosecutor to verify whether it meets the legal requirements and is equivalent to the aggrieved person dropping the complaint and the defendant presenting no defence. If no agreement is reached, proceedings shall continue in the judicial system and the Public Prosecutor shall order further investigations if necessary and decide whether the defendant should stand trial (with a formal charge), a decision which in private crimes is made by the "assistente" (assistant), or, if possible and once the approval of the Criminal Proceedings Judge has been granted, the Public Prosecutor may decide to file the case if an exemption from serving the sentence has been granted or shall provisionally suspend proceedings. It should be mentioned that if the agreement is not honoured within the time limit established, the aggrieved person may renew the complaint within one month, and the Public Prosecutor shall reopen the inquiry.

The penal mediation process is free of charge, regardless of the number or duration of the mediation sessions.

¹⁷⁵ To be a penal mediator a person must be over 25 years of age, in full enjoyment of their civil and political rights, hold a higher education degree or have appropriate professional experience, be qualified by having successfully completed a penal mediation course recognized by the Ministry of Justice, be suitable for the position of penal mediator, (a person shall be deemed unsuitable if he/she has been convicted of a willful crime), have a command of the Portuguese language and be selected in the competitions for lists of mediators launched by the GRAL.

Lastly, when a case is referred to mediation, the time limit shall be automatically suspended for formal charges to be made as well as for the maximum duration of the inquiry. The deadlines for criminal proceedings are suspended from when the case is referred to mediation until its return to the Public Prosecutor by the mediator, or, when mediation results in an agreement, to the date set for its fulfillment.

2. The trial period

Penal mediation is undergoing a trial period. Pursuant to the Penal Mediation Law, the trial period must have a duration of two years. In practice, the Penal Mediation Service began operating on 23rd January 2008, comprised of four judicial districts, namely Aveiro, Oliveira do Bairro, Oporto and Seixal. These judicial districts address very different scenarios, while the Oporto judicial district represents the country's second largest city, which is reflected in the number of cases eligible for referral to mediation, the remaining judicial districts have lower population densities and a lower number of criminal charges brought to justice, which shall clearly show a distinct picture. These different scenarios are enriching for the trial period that penal mediation is undergoing in Portugal, as it can be observed how penal mediation develops within different contexts, for example, from the point of view of its acceptance by citizens in general, particularly by defendants and aggrieved persons, but also from the Public Prosecutor's perspective, on deciding to refer cases to mediation, further to the obvious advantages of contributing to enhancing technical issues, such as electronic improvements. Therefore, these four judicial districts are an example of what penal mediation shall have to face at a national level as well as providing the opportunity for the managing bodies responsible for the Penal Mediation Service to make the best decisions for improvements prior to subsequently expanding the network to other judicial districts.

It is also important to mention that in compliance with that set forth in the Penal Mediation Law, the Ministry of Justice, via GRAL, signed the Protocol of Cooperation with Universidade Nova's Faculty of Law (FDUNL), on 21st December 2007, with the aim of monitoring, investigating and assessing the penal mediation trial project. The monitoring reports to be submitted by the Faculty shall also be an important instrument in establishing the quality standards of the penal mediation service.

II. Rights and duties of the victim within the penal mediation context

It is important to begin by establishing who, within the penal mediation context, can be deemed as being a victim. When the above mentioned penal mediation scope was described above, reference was always made to the defendant and the aggrieved person, due to that being the terminology used in Penal Mediation Law. However, considering the subject of this Conference, which is centered on the victims of crime, it needs defining.

The victim is the aggrieved person, or the holder of the interests the law wished to protect with the incrimination. In other words, the aggrieved person is the person against whom the crime was committed. Thus, it is the victim of the crime who is notified by the Public Prosecutor that the case has been referred to penal mediation in the cases that judicial body has taken this initiative. The victim of crime and the defendant may also take the initiative by jointly requesting the Public Prosecutor to refer the case to penal mediation, when that body has not already made a decision to that effect of its own initiative. It is also the victim who decides whether to accept mediation or not, when the Public Prosecutor has referred it to penal mediation and the first contacts are made between the victim, defendant and mediator, with a view to scheduling the first mediation session. The victim of the crime may also decide to revoke the acceptance of mediation at any

time during the mediation sessions, and shall strongly influence the content of the agreement and may renew the complaint should the terms of the agreement fail to be fulfilled.

The aforementioned ways in which the victim of crime can intervene in the penal mediation process are seen as a manifestation of her rights. Such rights have the power to determine the existence, development and manner in which the mediation process shall end, signifying that the victim of the crime has the power to shape penal mediation.

The attribution of this power is truly innovative for victims of crime within the Portuguese legal setting, because when attention is focused on criminal procedure, it is extremely difficult for the victim of crime to intervene in a case as a victim. To do so she must become an “assistente” (assistant), thus becoming a subject of the proceedings, assisted by a lawyer, due to legal representation being mandatory for assistentes, who, thereon, may intervene in the case, albeit through their lawyer. Lastly, the victim may intervene in criminal proceedings as a witness, by merely answering questions asked by Magistrates, lawyers and if necessary, Criminal Police bodies. Therefore, the victim does not suitably intervene in proceedings.

Under these terms, it is therefore important to introduce penal mediation into the Portuguese legal context.

The time for mediation is a time of and for people, thus there is no pre-established maximum duration of the mediation sessions. The mediation sessions can be seen as a time during which the victim's voice is heard, her reasons, intentions, anger and objections presented. This course of events is assisted by the mediator. And, in addition to the aforementioned rights, the victim has another: the right not to be confronted against her will, by her aggressor, the defendant. To exercise that right, the penal mediator's role is decisive. Clearly the period for mediation aims to be a time of dialogue and it is equally true that the mediator, as an impartial third party, who is neutral, has a determining role as a promoter of dialogue and assistant of the mediated parties throughout the course both parties are trying to take by forming an agreement that can only result from the will of the mediated parties. However, in penal mediation the mediators have an additional concern on how to place the victim and the aggressor face to face. For this to take place, how each party's wishes are conveyed to the mediator and how he manages them is a determining factor. In this process, the caucus is important as it is here that the mediator performs the mediation session taking a bifocal approach, meeting with the victim and the aggressor separately. This approach allows the mediator to determine the level of dispute between the victim and the aggressor, which may be immediately important in cases in which both are acquainted. A pertinent example would be cases of slander or insult offences motivated by personal problems between the parties. The importance of the caucus is not, however, limited to such cases. The fact that the victim is not face to face with her aggressor, enables her to distance herself more easily from the problem and eventually from the crime and the memories that it brings her. In that sense, the victim's dialogue with the mediator becomes more objective and less emotional, allowing the mediator, as the promoter of dialogue, by taking a bifocal approach, to convey the victim's wishes to the aggressor, and in the same way, learn those of the aggressor and convey them to the victim. In a way, the caucus allows the victim to gradually get to know her aggressor through the mediator and, in cases where she already knows him, prevents initial tensions or even the escalation of the conflict. In that sense, it protects the victim of crime and contributes towards the necessary preparation for the meeting between herself and her aggressor that shall take place if only when the mediation agreement is signed.

Under these terms, both the victim and the aggressor have to decide how, when and under which terms the mediation process shall proceed and whether an agreement can be reached. The mediator is not a Judge, he does not pass sentences or dictate decisions, he merely assists the victim of crime and the defendant, by encouraging dialogue. Hence, the right assigned to the mediated parties to ultimately make all the decisions is the foundation of mediation itself. There is not a single Portuguese word that can convey this idea, thus I shall use the English term to express it: empowerment. This is also one of the victim's rights.

The victim does, however, have duties within the penal mediation context. One results from that previously stated: the victim must attend the mediation sessions in person. She may be accompanied by a lawyer, or trainee lawyer, but her physical presence is compulsory, which is clearly a measure of her empowerment. There are exceptions, however. In cases where the victim of crime is an aggrieved person that lacks the discernment to understand the scope and meaning of the right of complaint or has died without waiving the right of complaint, penal mediation may take place with the intervention of the complainant instead of the aggrieved person¹⁷⁶. Finally, it must be mentioned that the victim of crime must refrain from divulging what is discussed in the mediation sessions. Confidentiality is a legal guarantee which is recognised in the mediation process. Therefore, it is a guarantee for the victim of crime against the other intervening parties in penal mediation, and at the same time, it is an obligation set forth, which is a duty.

III. A case study of the victim in penal mediation in Portugal: the victim seeks penal mediation, lack of knowledge and constraints, the presence of a lawyer, the agreement, crimes covered, the victim's assessment of the operation of the Penal Mediation System.

Selecting a victim for penal mediation in Portugal as a case study requires forewarning. As explained in detail above, penal mediation is still at a trial stage and on a reduced scale, available only in four judicial districts. Thus, there are some reservations in sharing information in this context. The information below aims to be more qualitative than quantitative as it is believed that it better illustrates the former on how the victim has navigated within the heart of penal mediation in Portugal.

Penal mediation is still scarcely sought by citizens, and naturally, victims of crime. There is a national number potential users can call for information. It is the blue number (at the cost of a local call) 808 26 2000. This number provides information on all means of alternative dispute resolution. Also on the GRAL website (www.gral.mj.pt) there is a lot of information and, inclusively, an e-mail can be sent to request information. On the GRAL website there is even a virtual person called Vera, who is available to answer specific questions about alternative dispute resolution means in general and penal mediation in particular. Thus, there are the tools necessary to clarify and assist citizens.

However, to date, all cases referred to penal mediation were by the Public Prosecutor. There are no cases in which the victim and the defendant have requested penal mediation to the Public Prosecutor.

Such an assertion is due mostly to the fact that mediation, whether penal or not, is a recent development in Portugal and has not yet been adopted by Portuguese society.

In the majority of European countries and the rest of the world, mediation has been around for more time or less. Mediation can be said to be part of the dispute resolution culture, particularly in Anglo-Saxon countries. In Romano-Germanic countries like ours, a positive experience has been imported that citizens have available to resolve particular disputes, namely penal. That was the aim for Portugal. By gathering the best experiences other countries have to offer under the scope of penal mediation and making the necessary adjustments to the setting in Portugal and the respective legal framework, citizens have been granted a new instrument which allows them to have access to Justice and to personally contribute towards reaching it.

We must be aware that in Portugal crime victims are not sufficiently familiar with penal mediation and all the possibilities it can bring. In penal mediation the victim can actively participate in restoring balance affected by

¹⁷⁶ Article 113 *CP* defines who has the right of complaint.

the crime committed. Furthermore, she has the opportunity to confront the aggressor with the consequences, whether personal or not, that the crime may have caused. She can also actively contribute towards how to be compensated for or how to overcome the crime, presenting specific proposals to the aggressor.

From all that has been said, the conclusion is that so-called restorative justice has not yet sufficiently permeated Portuguese society. In truth, victims of crime and citizens in general still regard with suspicion a means that allows them to resolve their disputes with the help of a mediator. Centuries of the Inquisition and Absolute Monarchy on a par with the Dictatorship of the New State are factors that may explain why the citizens of the still recent Portuguese democracy are more comfortable with decisions made by third parties that are imposed on them, instead of experiences allowing them to actively participate in overcoming the conflict. Such social factors and others may be better understood, studied and explained by experts in the field, who can fully explain why this is the case. Based on fact, I can state the Ministry of Justice has done all it can to raise citizens' awareness of the existence of mediation. Thus, I am certain that the positive outcome, which translates into overcoming penal disputes, shall be felt by victims of crime in the medium term, as penal mediation becomes more familiar.

When the victim of crime trusts penal mediation and feels comfortable during the mediation process, the lawyer's role, along with that of the mediator, may be very important. In fact, when the victim has a lawyer appointed or consults a lawyer before or during the mediation process, for example seeking assistance or advice on the possible content of the agreement, it is essential that the lawyer assists and advises in a clear manner. The lawyer may even accompany the victim during the mediation sessions. It must be mentioned that from the data gathered from the satisfaction questionnaires aimed at users of penal mediation, it can be deduced that over 70% of users seek legal advice, which is a positive sign, as in a way it also reveals the care mediators have taken to clearly explain both the victims' and defendants' rights.

With regard to the content of the agreement, it has been mentioned that the lawyer's role may be an important one. But such a role is not limited to him. It must be noted that the mediator immediately assists both the victim of the crime and the aggressor in establishing the terms of the agreement, the content of which is freely drawn up, therefore, if there is any illegality, it is he who should identify and eliminate it. In this process there is yet another entity which has a determining role: the Public Prosecutor. In effect, after the agreement has been drawn up and signed, it is submitted to the Public Prosecutor to be ratified. In the event that the agreement contains penalties comprising detention or duties which offend the dignity of the defendant or where performance shall extend over a period of more than six months, the Public Prosecutor is responsible for rejecting the approval of the agreement and returning it to the mediator for the illegality to be corrected together with the victim of the crime and the aggressor. Examples of duties eligible for comprising a mediation agreement are payment of a financial amount, an apology or the repair or rebuilding of damaged property.

From the different crimes which may be referred to penal mediation, experience has shown that a significant percentage refers to simple assault offences. Specifically, 45% of cases referred to penal mediation were based on simple assault offences.¹⁷⁷ This is followed by threatening¹⁷⁸ offences with 18%, the remaining percentage being distributed among the crimes referred to penal mediation. It can therefore be seen that a larger percentage of crimes are those against people, which therefore may be the reason for their resolution by the people involved themselves, namely the victim of the crime.

¹⁷⁷ *Cfr.* article 143 *CP*.

¹⁷⁸ *Cfr.* article 153 *CP*.

With regard to the assessment which is directed at the operation of the Penal Mediation System in Portugal, the available data results from the satisfaction survey sent to mediated parties, with no distinction between victim/aggressor. Nevertheless, the data is significant. Over 80% of the mediated parties under the scope of penal mediation stated that they were satisfied or very satisfied with the penal mediation process. This data is encouraging, and is a boost to continue the work being done, as it shows that everything that has been done in this field, for people, has been very positively assessed by those very same people.

Results of the Experience

Penal mediation helps towards focusing on the person against whom a crime was committed, giving her an active and determining role in overcoming the conflict.

Experience in penal mediation in Portugal has largely been focused on crimes against people, with particular emphasis on simple assault and threatening offences.

The vast majority of users that resort to penal mediation services have positively assessed the operation of the Penal Mediation System.

When the aggressor is released – The victim’s rights “post sentencing”

João Luís de Moraes Rocha **Court Appeal of Lisbon**

The theme of my presentation, would have perhaps been worthy of an introduction to place it within the framework – both legal and from the victim’s perspective – and I highlight, its insignificance, if not to say, non-existence, in the concerns of criminal policy and even, doctrinary and scientific reflection.

But I shall not do so, because the qualification of the audience surpasses - beyond anything I could say – the need for an introduction. Otherwise, time limits and the need to bring the subject into focus, discourage dispersal.

To redefine the subject, the underlying question to the theme could be: the absence of the victim in the execution of the sentence: Portugal’s case.

The phase of execution of the sentence is an independent phase of the trial and is presided over by a judge, in a court for that effect, which is separate from the court which passed the sentence.

The legislation regarding this “post sentencing” phase, has specifications.

Let us look at the legislation which refers to the execution of the sentence in which the victim could (should) be mentioned.

Portuguese law in respect of the execution of sentences which is still in force (Decree-Law n.º 783/76, of 29-10), does not even mention the word victim in any of its precepts.

As the result of an effort to jurisdictionalize the execution of the sentence, this law exclusively abides by the punitive paradigm of criminal sanction, in which the victim is purely and simply overlooked.

Given the age of this diploma, criminal practice, especially more recently, and particularly within the realm of temporary leaves of the inmate while still serving his sentence, raises some concern for the victim. This concern arises from the prison system operators themselves, by the judge and not from legal rules, and is the result of an order and not the compliance of a law set forth. Hence, there can be concern or not for the victim, it depends on the person – in which I include the prison system staff and those from the Institute of Social Reinsertion (Instituto de Reinserção Social) – who decide on an inmate’s early release, I would like to remind you that the decision is based on information from these professionals, and if they are not aware of the issue, it will be difficult for the reality of the victim to have any bearing on the judge’s decision.

Therefore, in fact, in this particular realm of the execution of the sentence, despite recent changes to national legislation in the Code of Criminal Procedure, despite decisions by the Council of Europe, namely the Framework Decision of 15th March 2001 on the standing of victims in criminal proceedings, the absence of factual and legal rights of the victim constitutes an unquestionable reality.

Nonetheless, in Portuguese Parliament today, the Legislative Proposal for Law 252/X is being discussed, which constitutes, nothing less than a “Code for the Execution of Sentences and Measures of the Deprivation of Liberty”.

Although it cannot be expected that this Code shall change the punitive paradigm in force, by including the victim in part of the process of the enforcement of the sentence, it would be expected that, as a result of the above mentioned decision by the Council of Europe of 2001, the victim would assume some relevance in this crucial phase of intervention of the State.

Let us look the Legislative Proposal n.° 252/X.

Immediately, in the "Explanatory Statement", in substantiating the argument for the new diploma, it is stated: the law is outdated in relation to prison practice, changes in the inmate population profile, the evolution of the social and criminal reality...as for the victim, nothing!

In effect, the Proposal aims to put legislation in order, and above all, strengthen the inmate's legally protected rights and interests. It increases the inmate's rights and guarantees before the Court, to the prison administration and in relation to society in general.

Well, this increase in guarantees that would have made sense 20 or 30 years ago, nowadays, by not being associated to other realities, is not up to date, it is outside the new paradigms under discussion and, with regard to our concerns, forgets the victim, which is a gross failing in the aims of formulating and repairing the damage caused and the general protection of the victim.

Even in the prison treatment and individual re-adaptation plan, the latter with a view to the approach of freedom, the victim's reality, namely her protection, is completely non-existent.

Paradoxically, in the submission of reasons for the Proposal, in point 12, it is stated: «This legislative proposal also pays particular attention to the victim, by means of the following provisions: upon imprisonment, the inmate is assessed, taking into account, apart from other details, the risks he presents to others, to the community and to the victim; in granting temporary releases, the protection needs of the victim, among others, are contemplated, the inmate's earnings are affected to a certain degree by the compliance of legal obligations, namely maintenance and compensation to the victim; with his consent, the inmate participates in restorative justice and offense repair programmes».

These are the measures the Project regards as characterizing the «special attention towards the victim».

We cannot cease to be apprehensive about the fact that the author of the Project, in view of such provisions, deems that he is granting special attention to the victim.

Let us see.

The assessment of the inmate upon his imprisonment (I underline imprisonment), within the prison establishment is system practice from last century and the identification of the risks he poses is subject to good sense, even if just for the safety of the system. We do not see that upon imprisonment such an assessment is of any consequence to the victim, unless she herself is also under arrest in the same prison establishment...

During permissions for release from prison, as has always been contemplated, in temporary or short-term releases from prison, the victim's protection is deemed necessary, if not just for the success of the measure. That of course is no news...

Earnings, due to the paltry amount, from which compensation is to be received, are of no real significance. Moreover, they are only partially affected. Poor the victim who has to depend on the inmate's earnings...

As for the restorative justice and offense repair programmes, they can only occur with the inmate's consent. As these programmes depend on the inmate's freewill, it is not clear how this measure translates into particular attention towards the victim's interests. These programmes are the inmate's right, not the victim's...

In brief, such provisions either correspond to current practices or have no real impact on the victim's reality and interests.

Why is it important to present methods and solutions, in the realm of the execution of sentences, at the right time, in the current historical context of the development of law, to take a few steps ahead and grant the victim two rights: the right to be informed and to be consulted.

In effect, the Proposal does not grant the victim any rights whatsoever, namely in regard to being informed of the execution of the sentence, and as for participating in the execution of the sentence, even merely as a consultant, as this role, as mentioned, cannot at this historical time in the evolution of the criminal procedure system, be granted.

What is suggested, therefore, at a basic level that should feature in the Project to the benefit of the victim and society in general?

Remember that the Framework Decision by the Council of Europe of 15-03-2001, refers that concern for the victim should go beyond criminal proceedings, or, «post sentencing».

Therefore, the right to be informed must be extended – to be set forth in law – when, the offender is or due to be released, be it temporary release, parole or final release.

Furthermore, the victim must be granted the right to be consulted whenever such permissions for release may result in potential danger to herself or, even, to others.

The granting of these two rights to the victim would translate into double participation.

The right to being informed, suggests the passive participation of the victim, despite such information, being considered to the victim's benefit. This right would imply that the judicial authority, further to being the guardian of individual liberties, would become, guardian of information of the victims.

This single right would show, that though passive, the victim was a legal reality in the phase of execution of the sentence.

On the other hand, in granting the need to consult the victim, such consultation in which the victim is at the service of justice, the justice system incorporates the victim as an element in its structure. This incorporation, takes on enormous significance because, until then, the victim was an «outsider» in the phase of execution of the sentence.

Upon taking this step, it would be possible to outline the beginning of another type of execution of criminal sentences, more open and less autistic.

Compensation To Crime Victims

José Albino Caetano Duarte **Commission for Crime Victims Compensations**

Victim is the person that, individually or collectively, suffered a damage, specially an offence to his physical or mental integrity, a moral pain, a material loss or a serious offence of his fundamental rights due to acts or omissions that break the criminal laws of the member state

Represent an infringement of international laws in matters of human rights.

This is the definition, adopted by the United Nations in 1995 and it can be taken as internationally accepted and acceptable.

The offence has two main kinds of consequences: physical and financial. In the moment of the offence, the victim can show a lot of physical reactions to it: the increase of adrenalin in the body, the acceleration of cardiac rhythm, shivers, tears, feeling of cold, thirsty mouth. They can lose control of the movements. After this moment, victims can show other physical effects that will remain for a long time: sleeplessness, appetite disturbances, lethargy, headaches, muscular tension, nausea and decrease of libido.

The offence has a financial impact also. This impact will mean a lot of different expenses: reparation of damaged goods, installation of safety equipments, health expenses, judicial expenses, loss of work time and funeral expenses. In more serious offences, the victim can have the need to change his residence moving to another city or can lose his work's ability or his place of work.

Only in the 40s and 50s of the 20th century, the criminologists began to care about the problems of the victims. We can refer specially the works of Von Hentig and Benjamin Mendelson. This movement in favour of the victims was developed particularly in the United States and influenced the legislations all over the world. This increase is the result of the action of three civic movements:

- The movement for the civil rights in the 60s in USA;
- The movement for the protection of woman rights;
- The movement of the victims themselves (specially against the second victimization by the authorities).

The national criminal laws began, according to this movement in favour of the victims, to give importance to the victims. In the development of this movement in Europe two different institutions had an important role: Council of Europe and European Union.

In 1977, the Committee of Ministers of the Council of Europe adopted the Recommendation (77) 27 recommending to the member states the adoption of the following measures:

Whereas the compensation can't be granted by any other mean, the State might compensate all persons that suffered serious injuries or everybody that depended from the mortal victim;

The compensation might cover all the damages, previous and future.

In 1983, the same Committee of Ministers adopted the European Convention on the Compensation of Victims of Violent Crimes. The main principles of this Convention are:

When compensation is not fully available from other sources the State shall contribute to compensate those who have sustained serious bodily injury and dependants of persons who have died;

The compensation shall be paid by the State on whose territory the crime was committed;

Compensation shall cover at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses and, as regard dependants, loss of maintenance.

The European Union adopted, in 15 March 2001, a Framework Decision on the Standing of Victims in Criminal Proceedings (2001/2207/JHA). The article 9 of this Framework says "Each member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner". This statement is important to mark that the compensation shall be paid by the offender and only in certain cases can be paid by another manner.

Finally, the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to Crime Victims provides the measures that the member States should take to grant the access to compensation in cross-border situations.

In Portugal the executive law 423/91 of 30 October, in accordance with the European Convention on the Compensation of Victims of Violent Crime, created a compensation scheme by the State to the victims of violent crimes. The objective of this law is to grant that in crime with more serious consequences, the victim will receive a compensation for the damages suffered. This compensation will be paid, in first hand by the offender himself but it happens, in many cases, which the offender has got no money or other profits and this compensation will not be paid. In these cases, the State can pay the compensation to the victim, in substitution of the offender. In 2006, the Law 31/06 of 21 July made some corrections in this scheme and introduced the measures about compensation in cross-border situations.

The State does not assume the overall responsibility for compensation to crime victims. Compensation is paid by social solidarity to crime victims. When the offender has no economic means to compensate the crime victim, the State takes the place of the offender. This means that crime victims who should receive State compensation are those that are in real need or that had suffered a considerable disturbance in the standard of living. The compensation will be paid only if there is a casual connection between the crime and this situation. In practice, the main rule is to award compensation unless there is obvious proof that the victim is not in need of compensation.

In the assessment of compensation, there is a connection to the law of damages but the scheme is based on equity and the victim's financial situation is taken into account. It aims only to restore the victim and does not include immaterial damages.

The compensation is subsidiary in character and is subject to a maximum which is currently € 30.000,00. Is possible an advanced payment but it is subjected to a maximum of € 7.500,00 which is a sum not exceeding a quarter of the maximum payment.

What can we understand as a violent crime? The answer is given by the portuguese law: crimes that cause more than 30 days of illness or physical disability. But, in the case of crimes against the sexual freedom and self-determination¹⁷⁹, the compensation can be paid even if the victim has suffered less than 30 days of illness. The seriousness of this type of crimes is enough to make their victims eligible to be compensated.

The victim needs to fulfil three conditions to have right to the compensation:

the victim must have been subjected to an intentional act of violence.

¹⁷⁹ The main example is the rape but it includes crimes as sexual assault on children, sexual fraud, and sexual coercion.

the act must have resulted in a serious bodily injury which has provoked total disability for more than 30 days, permanent disability or death¹⁸⁰.

the injury must have caused a considerable change in the victim's way of life or, in case of death, in the way of life of the person (or persons) entitled to maintenance from the victim.

Direct victims and those assisting the victim or the authorities in preventing the crime or pursuing an offender are eligible for compensation. When the victim dies, the right to compensation is transferred to those that the civil law bestows the right to alimony. These are, according to the Civil Code, the wife or the husband of the deceased, persons who has lived as man or wife with the victim in the last two years, descendants, ascendants, brothers, sisters, nephews and nieces while under age and stepsons and stepdaughters while under age that are financially dependent of the victim. The right to compensation for these persons is not conditioned by the right to compensation of the direct victim.

Applications for compensation have to be made within one year from the time the crime was committed or, if criminal proceedings have been instituted, one year from the final court decision. In case of appeal, the time to apply for compensation begins after the decision of the appeal and the time between the day of the crime and the end of the time to apply will be very large – 3, 4 or more years. Instead of that, the Minister of Justice may waive the time limit if certain circumstances, considered as justifiable, have prevented the victim from presenting the claim within the normal time span. These justifiable excuses might be of a material or a moral kind. For example, the economic situation of the victim can be a circumstance of material kind and illiteracy or physical incapacity for a long time can be considered a justifiable moral excuse. If the victim is under aged, the time to apply is of one year after the majority.

As I said before, the payment of compensation by the State is made according a principle of subsidiary application: the compensation is an act of social solidarity. This principle has some consequences:

The victim must prove that the offender is unable to pay damages;

The victim cannot receive compensation neither from the State nor from the offender¹⁸¹ or another entity like insurance or social security for the same items that are compensated according to the State compensation scheme;

Awarding compensation to the victim, the State takes over the victim's right to claim damages from the offender.

To grant that the victim will receive only compensation, the Commission is allowed to request information from fiscal authorities, social security or banks before determining the claim. When it happens that the offender want to pay the compensation, the Commission will not award the compensation or, if it has been awarded, will claim the restitution of the compensation paid.

All the persons victimized by an aggression committed on Portuguese territory or on board a Portuguese ship or aircraft are eligible for compensation. No matter if they are Portuguese national or not and if they are in Portuguese territory legally or illegally. Portuguese nationals injured abroad are entitled to compensation if they couldn't receive compensation from the State where the injury was sustained. For example, portuguese

¹⁸⁰ Some authors defend that compensation can be paid to victims without bodily injury if they suffered more than 30 days of mentally injury. It's the direct application of the European Convention on Compensation of Victims of Violent Crime but the official interpretation doesn't accept this idea.

¹⁸¹ Sometimes, the victim receives the compensation from the State and, after 2 or 3 years, receives the compensation from the offender. In this situation, the State will demand the victim to make the refund of the money received from the State.

citizens living in South Africa or Venezuela¹⁸², where there isn't any kind of compensation from the State, that are victims of violent crimes can apply for compensation from the Portuguese State.

The main rule is that State pays compensation for the material damages only. Then, applying this rule, the State will pay compensation for the following items:

Medical care and hospitalization – Compensation for medical care and hospitalisation as well as transportation to and from the hospital is covered by the State compensation scheme.

Damage to property and pecuniary losses – Compensation is awarded for items strictly connected to the body, such as spectacles. If the applicant is the person who voluntarily assisted the victim or co-operated with the police in the prevention of a criminal incident, is payable compensation for loss of property of significant value.

Loss of earnings – Are compensated when caused by a crime.

Permanent disability – Compensation for permanent disability is paid as the disability has led to a reduction in the earning capacity. It can also be awarded compensation for rehabilitation of the victim.

Scars and disfigurements – Payment for permanent disability includes payment for scars and disfigurements as it has led to a reduction in the earning capacity.

Non-material damage – Losses which are of non pecuniary kind are not compensated. As I said before, this is a result of the subsidiary nature of the State compensation. There are situations, as crimes against sexual freedom and self determination where is possible to award compensation to non pecuniary losses. The consequences of these crimes to the victim for all his life can cause it pecuniary losses and problems in the professional activity. Than, these damages can be compensated.

Legal costs – It is not necessary to be represented by a lawyer when applying for compensation and the proceedings in the Commission are free. Even the necessary documents for the instruction of the application can be obtained without the payment of taxes or fees. The legal costs – honorary of the lawyer, court taxes - are not awarded.

Fatal cases – When the victim dies as a result of the crime, funeral expenses and loss of maintenance are compensated. But if someone is maintained by the victim as a natural obligation and the victim hasn't a legal duty to do it, this person is not eligible for compensation.

Actually, there is in discussion in our Parliament a new law of compensation to crime victims. The new law will bring some important changes in the scheme of compensation by the State. The main changes are:

the State will pay compensation for non material damages;

it will be possible to pay compensation even if the crime is not an intentional act;

the creation of a budget for the Commission;

the Commission will be open 24 hours a day and 365 days per year.

¹⁸² Countries where we can find large communities of Portuguese citizens.

Conclusion

The movement in favour of the victims and the recommendations of the Council of Europe made possible that the laws in Europe and, namely in Portugal, gave a special attention to the victims. Now, the European Union is creating common legislation in behalf of the victims. The compensation is a measure to avoid a secondary victimization and the State needs to supply the compensation when the offender isn't able to do it.

On trafficking of victims in Greece

Niki Roubani *European Network of Women*

Introduction

Greece is a destination as well as a country via which traffickers sell young people to other EU countries.

Also, women's unemployment, twice that of the respective of men in Greece, is a significant contributor to the traps set for young migrant women by the criminal wrings of trafficking and sexual exploitation.

It is also a serious obstacle for social reintegration of victims who often become victimized again after their escape.

Since the nineties Greece has become the recipient of many women from transition economies, without having a proper migration policy or previous experience as it was a country sending migrants out to richer countries. Promises of a good life by traffickers brought in thousands of women sometimes through 'legal'-fake marriages- but mostly illegal routes, for exploitation.

Traffickers sell lies and fake dreams and enslave youth. Even women who found a way to come by themselves are targets for sexual exploitation and work in slavery conditions. Young people are their main target. Migrant women, with low paid jobs are now almost 10% of the working female population. Their contribution to Greek society and economy is great, especially for care jobs, care of children and elderly people, which allows other women to get professional careers. This contribution is not recognised in terms of protection of their rights. Lately a cleaning lady from Bulgaria who asked for insurance rights for her union was beaten and made to swallow acid, resulting in blindness and near death.

Legislation

A law was passed in 2002 on prevention of trafficking, victim protection and measures against threats to witnesses. Under age victims are covered by greater protection and strict sentences. Unfortunately the witnesses do not enjoy the same kind of protection as witnesses in drug smuggling and as many victims are very young and all are very traumatized, fear is a factor easily impressed upon them to stop them from testifying.

No governmental organizations carry the weight of outreach and support work without continuity of funding with very insufficient means. Cases take a very long time, a minimum of two years, to reach courtrooms and the second degree trials, another two.

Our organization has a policy of long term support, inside and outside our shelter so that we have managed to provide opportunity for witnesses for several trials. So far there are no second degree trials to our satisfaction because the few existing convictions for trafficking are at second trial changed to pimping, with far smaller sentences.

The Ministry of Health and Solidarity has in the last two years created women's shelters for battered women and victims of trafficking and this is an important step in the right direction, although the shelters are currently closed down, due to inconsistent funding. Token funding which might be the result of indifference or corruption seems to be a great problem, proving that the issue still needs to be prioritized politically.

The existence and quality of shelters is very important for witness protection and furthermore, because working around the rights of victims the NGOs which are supporting victims can exchange experience with public employees, which may have an important effect on influencing and improving future policies.

A lot of money from the traffickers is 'invested' in corruption and to making people look the other way. As in our organizations we are advocating for victim support and for policies and strategies of cooperation of different agents for combating trafficking, we become the target of serious threats and continuous attempts of defamation by the traffickers and their legal advisors. Therefore lawyers' Bars should undertake the task of clarifying good practice and malpractice which is an important contributor to democratic rights.

Victim Protection

We believe that our first concern should be the right of victimized and targeted women and men to obtain information, so we are networking with other organizations and volunteers to provide translation of documents and interpretation, so that they may understand their rights.

The Ministry of Public Order has created the very effective, though small, special Anti-Trafficking Police Unit, which during the summer 2006 was moved from Vice under 'International Crime'.

This unit has had great success with unveiling trafficking and making arrests but is not matched with victim support measures and funding.

The victims are still at a disadvantage in court, without good legal support- due to inadequate resources- while the traffickers may hire the best lawyers.

The funding for victim support is by comparison to other EU countries quite insufficient to cover the multiple needs of the victims.

They suffer from post traumatic stress, they need to go through a long processes so as to acquire simple social skills, such as getting around the city, learning the language, let alone getting over the psychosomatic problems created by post traumatic disorder and the contagious diseases they may have acquired. They finally need to make a life plan and to go back to school or/and to look for a job.

Professional protocols are insufficient in state and private help. We insist on continuous education of all professionals, so as to catch up with the traffickers' new tricks, and to have sensitization so as to comprehend the complex situation of young victims who dream of helping themselves and their families at home.

Also the non governmental, non profit organizations dealing with the issue, signed a special Protocol of Cooperation with the Ministries of Justice, of Exterior, of Public Order, of Health and Solidarity, of Internal Affairs, authorizing certain activities regarding Victim Support. In spite of this Protocol there has been no follow up meeting of the NGOs with the Ministries or among the Ministers. Also, there is little or no legal support for victims and NGOs when there are court cases. As victims do not come under the 'victim protection' measures as in drug cases, the police may cover their commuting to court or to make testimonies but otherwise they are exposed to danger of retribution, so they are usually flown back home and very rarely, when backed by NGOs stay to testify in court.

A good law without support structures proves a useless law for the majority of the victims. The application of the law still is faced with many shortcomings, due also to two other reasons: the perpetuation of stereotypes and the lack of specific, not optional, sensitization and training for public employees, so as to restore the respect for the victimized women and to allow comprehension of the various aspects of the issues.

Training of professionals must be continuous.

Trafficking is constantly changing faces, adapting to the recent legal provisions, i.e. instead of being smuggled over mountains, in order to get into Greece, women from non EU countries are persuaded or forced to get married to unknown men, often without knowing they are leading themselves to slavery. Also, sexual exploitation is adapting to evade the law, i.e., while the police are focusing on forced prostitution, the traffickers change their exploitation method, so that the girls are often made to work as 'private strip dancers'.

In short, we are proposing:

Prevention: Besides the protection of people at risk, due to poverty and distorted information, the activities of prevention should aim at the enlightenment of whosoever is interested in "illegal" trafficking. In this sense even the "clients" (for example the visitors of a prostitution house) may thus inform the authorities whenever they suspect forced prostitution. Information/raising of awareness/prevention-especially for young men now still in schools, who might make use of the services of slavery, besides people under risk and socially excluded people, in Greece but also in neighbouring countries such as Albania, Bulgaria, Cyprus, Turkey.

We need better cooperation of formal/state and non formal/volunteer agent which are more flexible in their practices. Adequate protection and support of the victims in cooperation with Foundations and Non Government Organizations, in the sense of human solidarity, compassion, sisterhood, which run along the sense of professionalism. The victims are deeply wounded and in need to absorb a sense of justice, respect for their human rights and help them make the choices they need.

Effective application of legislations in reference to policies and structures against this particular phenomenon.

Training of professionals who are working with victims, such as, police, prosecutors, social workers, etc, not simply to introduce to them new knowledge but also training aiming to reverse harmful stereotyping.

Shelters must be adequately funded and supported. Everyone must accept that the victim has the right of choice and decision even if this goes against to our personal sense of "right" and "wrong" or the "necessary", even if we have gone a long way to support an individual. We should never attempt to infantilize the victim, that is, to treat them as minors. Our goal is to support and offer alternatives, not to manage their lives instead. When our behaviour shows respect, we empower people more, when we give them unasked for advice then we drown them with this advice. The victims are usually very young women and they need the time to gain self respect and a vision for the future. Experience shows that this may take more than two years. Therefore victims of trafficking should not be treated as victims of family violence in short term basis, but rather as victims of multiple rapes, for longer treatment.

Also combating work trafficking should be the object of political priority at local authority level.

Trafficking in humans and victim protection in Sweden

Märta C. Johanson

The presentation focuses on the Swedish legal framework for combating trafficking in humans. Sweden has an array of (traditional) crimes as well as a specific crime of trafficking in humans, based on the Palermo Protocol, that can be used to combat trafficking. The complexity of the crimes themselves, the number of crimes, and their interrelationship, has led to similar cases being treated under different legislation with varying consequences for the victims of trafficking. Under certain legislation they have the right to legal representation; under other legislation they do not. Damages also differ depending on what crimes the perpetrators have been found guilty of. The treatment of trafficking victims under 18 has in several cases contravened international and regional standards and there is much work to be done in clarifying the approach that provides victims with adequate support and the rights that they are entitled to. There are, however, interesting possibilities in the Swedish legal framework. One is using the criminalisation of purchasing sex and applying for damages from the sex customer. When it comes to trafficking victims under 18, who constitute a large group of trafficking victims, there is even a special crime ("purchase of sexual acts from a child") which carries heavier penalties than the "ordinary" crime of buying sexual services. If the crime begins to be applied in prosecutions in the context of trafficked minors it could prove very helpful for victims. Moving towards the use of civil remedies as a way to reduce the market for human trafficking, as well as providing some measure of compensation for the victims, seems to be a promising way forward.

The criminalisation

In 2002 the crime of trafficking in humans for sexual purposes was entered into the Swedish Criminal Code. In 2004 the criminalisation was expanded to include additional forms of exploitation other than sexual exploitation, such as being used in war, forced labour, and the removal of organs.¹⁸³ The changes also involved criminalisation of other than transnational acts, which meant that the crime could now be conducted completely on Swedish territory without any transboundary component. In light of the perceived risk that persons with only peripheral involvement could be prosecuted, the new legislation included the clarification that the acts for the purpose of exploitation by use of certain means had to mean that "control" now was established over the intended victim.¹⁸⁴ If this could not be shown then the crime of human trafficking had not been committed.

The Swedish legislator's purpose with the criminalisation was to fulfil the requirements on states who are parties to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000 (hereafter the Palermo Protocol). Article 3a of the Palermo Protocol identifies three components to the crime of trafficking in humans: 1) a specific measure is taken (such as recruitment or transportation); 2) by using a certain means (e.g. coercion or deception); 3) for the purpose of certain exploitation (e.g. prostitution or the removal of organs). The Swedish crime generally followed this structure, but the requirement of "control" that was added in 2004 was interpreted and applied by the judiciary to constitute an additional requirement above the three components. Prosecutors thus had to prove both the use of a certain means as well as additional

¹⁸³ Criminal Code (1962:700) 4:1a

¹⁸⁴ See the *travaux préparatoires* in Ds 2003:45, pp. 156-61 and prop. 2003/04:111, pp. 49-56

evidence that the victim was under the “control” of the trafficker because of the means used. The crime of trafficking has proven very difficult for prosecutors¹⁸⁵ and there have been relatively few convictions so far.

An effect of the added requirement of “control” can be seen in the application to victims under the age of 18. Article 3c of the Palermo Protocol specifies that it is trafficking when a specific measure is taken for the purpose of certain exploitation against a person under 18 even when no measure listed in article 3a has been used. Thus, if a person under 18 is recruited for the purpose of prostitution, this is enough to be considered trafficking in humans under the Protocol. However, the requirement of “control” in the Swedish Criminal Code has been applied also to minors. In several cases prosecutors have failed to gain convictions for trafficking where victims under 18 have been recruited, transported and harboured for prostitution, because the courts have not been convinced that they were also under the “control” of the traffickers.¹⁸⁶ This is a breach of the standards laid down for the protection of persons under 18 in art. 3c of the Palermo Protocol, art. 1(3) of the Council Framework Decision (2002/629/JHA) on combating trafficking in human beings, and article 3 of the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).¹⁸⁷

Aggravated procurement (pimping) as an alternative

The difficulty inherent in the crime of trafficking in humans has led to alternative strategies for prosecutors. Many cases that could be tried under the crime of trafficking are instead tried under the crime of aggravated or gross procurement (pimping). The crime of procurement can be either ordinary or aggravated. In 2005 certain changes were made in the criminalisation.¹⁸⁸ Sentences for aggravated procurement were changed from between 2-6 years¹⁸⁹ to between 2-8 years,¹⁹⁰ and one of the new factors which could lead to aggravated procurement was if the procurement was organised and extensive. The preparatory works explain that aggravated procurement should be able to cover the cases which are similar to or have the characteristics of trafficking but where the prosecutor cannot give sufficient evidence of one of the means listed having been used.¹⁹¹ So aggravated procurement is now often used as a form of trafficking crime which is easier to prove. The sentences for the two crimes are more alike in length than earlier, and convictions for organised trafficking can more easily be made. However, the developments have a number of implications for trafficking victims.

Victims of human trafficking: status in legal proceedings and damages

First, the crime of trafficking is completed before any exploitation has taken place. Under the Palermo Protocol it is enough that an action has been taken, using one of the means, and for the purpose of exploitation. The exploitation itself does not have to have begun or taken place for the crime to be completed.

¹⁸⁵ See study by the Prosecution Authority, RättsPM 2007:2

¹⁸⁶ See e.g. judgment by the district court (Stockholms TR avd. 13, dom i mål B 8862-04 20 Jan. 2006 p. 82), and upheld by the court of appeal (Svea HovR avd. 7, dom i mål B 1149-06 of 9 May 2006). A recent government study of the changes after 2004 has recommended that the criteria of “control” be removed. SOU 2008:41

¹⁸⁷ It would also constitute a violation of art. 4c of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No 197) if Sweden had ratified the treaty.

¹⁸⁸ Prop. 2004/04:45, section 12.4

¹⁸⁹ Criminal Code 6:9 in force until March 31, 2005

¹⁹⁰ Criminal Code 6:12, sec. 2, in force from April 1, 2005

¹⁹¹ Prop. 2004/04:45, section 12.4

If there is additional exploitation, this should be dealt with as an additional crime against the victim, e.g. rape or abuse, and the sentence should take this into account. The exploitation is not subsumed under or within the crime of trafficking. Trafficking as a crime thus functions with a partly preventive purpose in laying down criminal responsibility without damage from the actual exploitation needing to have occurred yet. If the crime of trafficking is constructed as too difficult to apply in practice, the alternative is a crime with a different time frame and reduced protection. There have to be victims of actual sexual exploitation for an offender to be held accountable.¹⁹² This also has implications for trafficking crimes where the intended exploitation is not sexual. The crime of trafficking is intended to cover situations other than prostitution. If the crime is highly difficult for prosecutors to get convictions under, there will be a challenge in situations where the exploitation is not prostitution to find alternative crimes with similarly long sentences.¹⁹³

Second, trafficking and procurement have different objects of protection. Trafficking is included in chapter 4 of the Swedish Criminal Code as a crime against freedom. It is the removal or reduction of a person's freedom that is the violation, and it is a grievous crime. Procurement is included in chapter 6 of the Criminal Code, which is the chapter on sexual crimes. However, procurement is not understood as a crime against an individual, but as a crime against the state and a crime against order.¹⁹⁴ There is traditionally no individual victim of procurement, and this has implications for victims regarding legal representation in trial and the possibility of redress. They can function as witnesses, not complainants. A claim for damages for violations suffered cannot be made if there is no victim. However, certain practices have begun to be applied to remedy the protection lacunae. Because aggravated procurement has often replaced trafficking as the charge brought against the defendant, victims are now generally given the right to legal representation also in these cases. In a few cases so far victims of trafficking and aggravated procurement have been awarded damages for the aggravated procurement.¹⁹⁵ The relationship between the crimes and the right to seek and be awarded damages is nevertheless still unclear, with differing treatment for victims before different courts. It remains a challenge for Sweden to make damages available to trafficking victims in accordance with the obligation to do so under art. 6(6) of the Palermo Protocol¹⁹⁶ and obligations under art. 9 of the Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings.

¹⁹² An example is found in the judgment of the Gothenburg district court (Gbg TR avd. 11 dom i mål B 12308-06 of 21 June 2007) where the intended victim was rescued by police the day after her arrival and before she had sold any sexual services. The court was not convinced by the prosecutor's evidence that the victim had been deceived about the work of prostitution in Stockholm as she had arrived without money and a return ticket and stated that she had planned to apply for asylum. Without examining other means used, such as abuse of a vulnerable position, the court found that the crime of trafficking could therefore not be proven. Because the police had rescued her before she prostituted, the crime could only therefore be an attempt at aggravated procurement and her claims to damages were denied. If the court had found that a means (as listed in art. 3a of the Palermo Protocol) had been used, the crime of trafficking in humans would have been committed even though the sexual exploitation had not yet taken place.

¹⁹³ The first conviction for trafficking in humans for other than sexual purposes, where the victim was also male, was recently rendered. See judgment by Stockholm's district court (TR avd. 4, dom i mål B 10768-08, 30 Jan. 2009). The victim was awarded 155 000 Skr. in damages.

¹⁹⁴ Prop. 2004/05:45, pp. 103-4

¹⁹⁵ Judgment in court of appeal (Svea HovR, dom i mål B 5488-07, 21 Sept. 2007). The defendant was convicted of trafficking in humans, aggravated procurement, gross sexual exploitation of minor, and rape. The victim was awarded 365 000 Skr in damages for the latter three crimes. However, no damages were awarded for the suffering connected to the trafficking itself. On 29 Oct. 2008 the appeals court, in another case, upheld the district court's award of 230 000 Skr in damages for aggravated procurement (Svea HovR avd. 9, dom i mål B 5886-08). The trafficking charge in the case was unsuccessful. It was the first charge of trafficking in humans with only Swedish nationals as defendants and complainants. With regard to damages for aggravated procurement, the *travaux préparatoires* to 2:3 of the Swedish Law of Damages (1972:207) allowed for damages in certain cases of aggravated procurement in contrast with ordinary procurement (SOU 1992:84, p. 268; see also prop. 1972:5, p. 570 on the earlier legislation).

¹⁹⁶ *Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.* Damages can also be sought directly from the State after a judgment (brottsskadeersättning). In 2006 the first claims for damages for trafficking were made. On 19 Feb. 2007 three persons were granted compensation by the State Board for Victim Damages (Brottsskadenämnden) of 100 000 Skr, 150 000 Skr and 10 000 Skr. Dnr 12008/2006, 10355/2006 and 12009/06.

It may also be interesting to note that courts often make decisions in the criminal cases to forfeit the estimated earning from the prostitution or other exploitation, from the means that the defendants had available, for the benefit of the state, rather than granting higher damages to the victims. In 2008 the rules on forfeiture of the illicit earnings from a crime were revised to make it easier for the state to forfeit the property of a defendant when there is reason to believe it is the illicit earnings of a crime. The crimes of human trafficking and procurement were specifically mentioned as instances when the new rules come into play.¹⁹⁷

Residence permits and access to health- and social services

There are several further issues that affect victims of trafficking, such as receiving support by social services and the possibility to remain permanently in the host state. Being a victim of trafficking in humans has been taken into consideration differently by Swedish migration appeals courts when determining applications for residence permits. In two cases concerning victims who had testified against their traffickers both were finally granted permanent residence permits, though not on the basis of being trafficking victims or of having testified.¹⁹⁸

It can be noted in this context that applications made by prosecutors for temporary residence permits for a witness in order to participate in criminal proceedings are routinely accepted. However, the purpose and application of the legislation granting this possibility is for the victim to act as a witness for the state.¹⁹⁹ During this time the witness has the same rights as Swedish citizens to healthcare and social services.²⁰⁰ The temporary residence permit is, of course, only relevant for non-EU citizens, and many of the trafficking victims are EU citizens.

Criminalising the purchase of sexual services

Sweden was, up until this year, unique in having criminalised the purchase of sexual services, not their sale.²⁰¹ The background to the criminalisation that entered into force 1999 – placing the criminal responsibility on customers – is twofold: the struggle for equality between the sexes, with the perspective that access to another person's body (primarily women's bodies) is not an item to be purchased; and the position that most persons selling sex are from vulnerable and marginalised sections of society, and criminalising their actions has no justification as they are exploited and need support, not sentences.²⁰² The crime of purchasing sexual services is regulated in two different paragraphs: one criminalising the purchase of sexual acts from a child;²⁰³

¹⁹⁷ Criminal Code 36:1b, s. 2 ("förverkande av utbyte av brott")

¹⁹⁸ One was granted the permit because she had a small child coupled with the risk of social ostracisation if forced to return home. The other, because she belonged to a marginalised ethnic minority in the country of origin with few support services, and her youth and lack of social support network in the country of origin were considered special circumstances. (Länsrätten i Stockholms län, Migrationsdomstolen, dom i mål UM 1529-07, 14 June, 2007; Länsrätten i Skåne län, Migrationsdomstolen avd. 6, dom i mål UM 1335-06, 22 Nov. 2006)

¹⁹⁹ Law on Foreigners (Utlänningslagen [2005:716]) 5:15

²⁰⁰ See an example of Swedish efforts to coordinate the responses of the various state agencies to victims of human trafficking (the social services, police and immigration authorities) in: *Nationell myndighetssamverkansplan för stöd till personer utsatta för människohandel* (2007) at: http://samverkanmottrafficking.se/myndighetssamverkan/pdf/nationell_samverkansplan2007_webb.pdf

²⁰¹ Norway criminalised the purchase of sexual services in January 2009. The sale of services is, like in Sweden, not criminal. Iceland followed suit by criminalising purchase of sexual services on April 21, 2009.

²⁰² SOU 1995:15, *Könshandeln*, pp. 137-49; Prop. 1997/98:55, *Kvinnofrid*, pp. 104-7

²⁰³ Criminal Code 6:9

one criminalising the payment of sexual services generally.²⁰⁴ The two crimes have different objects of protection: the legislator wanted to strengthen the protection of persons under 18 against exploitation and their being drawn into prostitution, and therefore created the former crime in 2005.²⁰⁵ Sentences range between fines to prison for up to 2 years. The latter crime of 'ordinary' sex purchasing carries with it a sentence beginning with fines to up to 6 months in prison. So far no prison sentences have been meted out for convictions regarding the latter crime.

In Finland it is a crime to purchase sexual acts from a person who is trafficked, in line with the Palermo Protocol's requirement under article 9(5) to inter alia adopt legislative measures to discourage demand for the exploitation that leads to trafficking.²⁰⁶ This distinction in the buying of sexual services has not been made in Sweden. In cases where defendants have been found guilty of trafficking, customers of the victims have only been sentenced to fines – the same level of fine as if sentenced to having bought sexual services from a non-trafficked person. In one recent case, however, four customers were given conditional sentences as well as fines because the Court found that they inter alia were aware that there was an organisation behind the women who they bought sexual services from.²⁰⁷ The courts could well move into rendering harsher sentences for customers who have reason to suspect trafficking.

What has been missing so far is considering the compounded factors of age and trafficking: using the crime of purchasing sexual acts from a child in cases of trafficking or aggravated procurement instead of bringing charges under the crime of (ordinary) purchasing of sexual services.²⁰⁸ No customer of trafficked minors has yet been charged with the harsher crime even though around half of the victims in cases brought before courts so far have been under 18. The crime is ripe for use also in trafficking or trafficking-like cases – not only cases involving Swedish victims. In 2008 damages were awarded to the 15 year old victim in a case where the defendant was convicted of having purchased sexual acts from a child.²⁰⁹ This should also be applied with regard to customers of trafficking victims under 18, in order to reduce the demand for sexual services, especially with regard to minors, and thereby the market for trafficking in humans. Focusing on age and bringing charges under the most suitable crimes concerning procurers and buyers has the possibility of rendering harsher sentences, recognition of the status as a victim in legal proceedings, as well as compensation for the victims.²¹⁰

²⁰⁴ Criminal Code 6:11

²⁰⁵ Prop. 2004/05:45, section 12.1. This is in line with art. 2(c)(ii) of the Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography, which requires that Member States criminalise engaging in sexual activities with a child where money or other forms of remuneration is given as payment. It also accords with the duty under art. 3(1)(a)(i) and 3(2) of the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000), as well as art. 19(1)(c) of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No 201). Sweden has not yet ratified the latter treaty.

²⁰⁶ *States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.*

²⁰⁷ See judgment by the court of appeal (HovR:n för västra Sverige avd. 3, dom i mål B 3065-07, 18 Dec. 2007)

²⁰⁸ According to the *travaux préparatoires* the 'ordinary' crime of purchasing sexual services is subsidiary to the crime of purchasing sexual acts from a child. Prop. 2004/05:45

²⁰⁹ The victim was awarded 10 000 Skr in damages. Judgment by the court of appeal (Svea HovR avd. 3, dom i mål B 8918-06, 14 March 2008).

²¹⁰ Art. 9(4) of the Optional Protocol to the CRC states: *States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.* This then includes both the procurers and the buyers.

A Critical Assessment of the Criminal Justice System & Victim Advocacy in Cases of Sexual Assault & Child Sexual Abuse

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In Germany, the last ten years has seen a marked reform concerning the position of victims in criminal proceedings; sexual assault in a marriage became a felony offense, legal counsel is now available to all victims of sexual assault at state cost, trials may be closed to the public during victim testimony and law enforcement officials must inform victims of advocacy support services in their community as well as their right to legal counsel.

Unfortunately there continues to exist a discouraging discrepancy between the legal breadth of the law and the actual implementation of victim rights in criminal justice proceedings. The ensuing ramifications for victims of sexual assault and child sexual abuse are not only substantial but have also have proven to be a significant hindrance in criminal proceedings.

The following presentation seeks to address this issue by first describing the present advocacy service system and defining the legislative framework of existing penal law and rights for victims, then exploring the situation of victims of sexual assault and child sexual abuse in criminal proceedings and in conclusion, investigating possible and necessary changes in both the criminal justice system and the organisation of victim advocacy which would strengthen the position of such victims in criminal proceedings– nationwide and EU-wide.

Victim Advocacy Services

Victim advocacy services existing in Germany over the last 10-20 years have become increasingly professional, initiating cooperation with local law enforcement agencies and developing nationwide networks of community advocacy services. Rape crisis & counseling centers are found throughout Germany. “Weisser Ring” is a nationwide and renowned organisation which offers victims of crime financial assistance & voluntary advocacy support. ADO (Arbeitskreises der Opferhilfen Deutschland e.V.) is a networking organisation established in the last few years to promote victim advocacy in Germany. There are also Womens Shelters for victims of domestic violence and trauma counseling centers available to all victims of trauma in Germany. In some areas, victim advocacy programs have been recently initiated in the justice system itself.

Current research in psychology, neurophysiology and trauma emphasize once again the importance of early professional intervention in cases of sexual assault and child sexual abuse, supporting the necessity for professional – as opposed to voluntary - advocate support for victims of such crimes.

In order to provide such comprehensive professional services to victims of sexual assault, the rape crisis & counseling center, Frauenhorizonte – Gegen sexuelle Gewalt e.V. was founded as a pilot project in 1991 in Freiburg, Germany, with the goal of ensuring that the needs of rape victims in Freiburg are sensitively met. Frauenhorizonte e.V. has a 24 hour crisis hotline and immediate response team, offering professional advocacy throughout a criminal process, psychological counseling and referral services for victims of sexual violence based on individual needs. The Center advocates for the rights of sexual assault victims to receive proper medical care, sensitive police response and vigorous prosecution of the perpetrator.

As a comprehensive support, advocacy and educational agency, Frauenhorizonte e.V. is part of a nationwide network seeking interdisciplinary cooperation with law enforcement agencies, health care providers and members of the criminal justice system. The center is politically active, providing public education & awareness projects in the surrounding communities and states.

Frauenhorizonte e.V. also provides training programs and speakers for social service agencies, healthcare providers, members of the criminal justice system and law enforcement agencies. One of the most effective initiatives in the past years has been the establishment of a training program for law enforcement officers and criminal detectives at the police academy in Freiburg in the areas of psychotraumatology and victim interviews. This has resulted in a better understanding of the ramifications of such crimes and thus a more sensitive response from law enforcement agencies dealing with the victims.

Legislative Framework and Legal Parameters

The existing penal laws and rights for victims of sexual assault and child sexual abuse are largely in accordance with the basic rights for victims of crime defined in the 2001 EU Framework Decision. Nevertheless, the parameters of the law are limited in the actual implementation of the rights of victims in criminal proceedings.

The discrepancy begins with the filing of charges and carries through to the last court proceeding – and often times beyond. In the following text, the legislative framework is defined along with the difficulties associated with the individual laws in securing the rights of the victim.

The statute of limitations for sexual assault is 20 years, for child sexual abuse, 10 years after the 18th birthday (therefore when the victim is 28 years old) unless there is violence involved in the abuse, in which case the 20 year statute of limitations applies. Most cases take an average of 9-12 months from the filing of charges to the first court date. This is extremely long for the victim presenting a great dilemma for both the victim and psychological counselors committed to promoting a healing process that may only truly begin when the last trial is over.

In Germany, sexual assault / and child sexual abuse is a felony and legally must be investigated regardless of victim compliance! For the state this is an important law to ensure the safety of the community. For the victim however, it may result in the participation in a criminal proceeding against the will of the victim. This may be especially problematic in cases of child sexual abuse, where a parent or teacher files charges without victim consent, resulting in an uncooperative victim witness, poor victim testimony and a possible retraumatization of the victim.

It is possible to have the defendant await trial in jail if he / she is a danger to the public or a flight risk. In such cases the trial must take place within 6 months, which is a great relief to the victim. Unfortunately this generally occurs only if the defendant has earlier convictions or is in asylum in the country.

Victims of felony crimes have the right to the presence of a victim advocate (or person of trust) at all victim interviews including the first interview with law enforcement officers and during all court testimony. Unfortunately, victims are often unaware of this possibility and are offered advocacy support only after the initial interview- either due to a lack of availability of an advocate or due to a lack of interdisciplinary cooperation between advocacy services and law enforcement. Often victims of sexual assault come to file charges with a family member, partner or friend. It is important to the legal relevance of the interview and to the ensuing psychological well-being of the victim that he/she not be interviewed in the company of family, friends or partners. A professional advocate can much better provide the necessary support and information, assisting the victim throughout the criminal proceedings.

While victims have a right to have women law enforcement interviewers, medical examiners and judges, women are unfortunately often unavailable or untrained.

Victims who continue to be in danger may file a protection order. The danger is sometimes not recognized and the order therefore refused or delayed until there is more evidence of danger.

Victims addresses may be withheld from all court files at the explicit request of the victim at the time of filing charges or soon thereafter.

Victims have the right to be informed of their rights, of all court decisions regarding the proceedings and of advocacy services in their community. Victims are often overwhelmed when filing charges and are unable to comprehend the information given at the time and therefore fail to take advantage of their rights.

Victims have a right to legal counsel of their choice at state cost. This attorney should be a criminal lawyer with experience in and knowledge of sexual assault and/or child sexual abuse cases. The victims' attorney has access to all court files regarding the case and he or she may file motions for further witnesses and further evidence and respond to any motions or communications from the defendants attorney, the prosecutor or judge. The attorney is present throughout court proceedings and may question all witnesses, petition for compensation and make a summation including possible sentencing, at the end of the trial. The attorney may also plea bargain, ideally with informed consent of the victim.

While the law is such that psychological testing may be requested of victims with possible psychological problems or of children, in fact this practice has become all too common, leading in some cases to a retraumatization of the victim and in almost all cases is experienced as an affront to the victims' credibility. Victims should be aware of their right to refuse to undergo psychological testing and such a decision should be honored by the court.

There is quite a bit of legislation designed to reduce the number of interviews a victim is required to make in the criminal proceedings. Acceptable alternatives include:

A videotaped interview with a law enforcement officer which may be shown at the trial as evidence.

Written testimony taken by a judge in the presence only of the defendants' attorney and the victims' attorney and/or the victim advocate, which may be read at the trial as evidence.

Taking the case before a superior court (as opposed to district court) where the conviction may not go to appeal but may only be revised on a legal technicality.

Unfortunately these alternatives seem to be used exclusively for children or victims related to the defendant. Victim must often, despite having been interviewed by a judge or participating in a video interview, nevertheless appear for testimony in court.

Another possibility to support victims which fails in general to be utilized (perhaps due to technical or financial limitations?) is video testimony at the trial itself with the judge, victim, advocate and victim attorney in different rooms from the defendant and defendants' attorney.

With legal counsel victims have the right to be present throughout court proceedings. They have a right to be protected from contact with the defendant- theoretically there should be separate waiting rooms for victim witnesses, which is the case in only a handful of courts throughout Germany.

The victims' attorney may motion for a closed trial during the victim testimony, which in most cases, unless the victim requests otherwise, is implemented. Exclusion of the defendant during victim testimony on the other hand is also possible but only in rare cases, generally with children, is it implemented.

Judges have a number of other possibilities to reduce the anxiety of victims facing the defendant, which are increasingly utilized in Freiburg. For instance the judge may meet the victim outside the courtroom before the testimony begins, an advocate may sit next to the victim separating him or her from the defendant during the victims testimony, the defendant may sit in the back of the courtroom- out of the victims view- during the

testimony, the courtroom may be cleared before the victims testimony to insure that the victim does not come in contact with the public or other witnesses.

One tool in USA that is not yet available in Germany is called a rape shield law, which limits what the defense can ask victims regarding prior sexual history.

The law states that a person convicted of rape shall receive a minimum sentence of 2 years. A sentence of under 2 years may be given probation as opposed to a jail term. In a recent study, only an average of 10% of cases known to the police result in a conviction in Germany. Most cases of sexual assault or child sexual abuse never go to trial due to lack of physical evidence and many result in a probation sentence.

Victims of Sexual Assault and Child Sexual Abuse

The focus of this presentation is on victims of sexual assault and child sexual abuse- a population that presents an array of difficulties in criminal proceedings that are specific to the nature of the crime and its consequences for victims. The parameters surrounding a criminal process in cases of sexual assault and child sexual abuse are difficult enough in the legislative framework: in most cases it's the victims word against the defendants word, there are no witnesses and very little, if any, physical evidence to verify the crime. In addition there are the psychological consequences of the crime for the victim that may make it difficult to obtain clear, comprehensive testimony.

Sexual assault and child sexual abuse represent traumatic experiences that threaten the physical and psychological integrity of the victim, resulting in stress reactions common to all forms of trauma, be it war, natural catastrophe or physical violence. Due to the intimate nature of sexual violence and the continuing false beliefs and judgements regarding sexual violence, these victims are at greater risk than any other trauma victims for developing post-traumatic stress disorder (50%-55% of the cases - the second highest rate being found among war victims at ca. 35%). Information regarding sexual assault and abuse and trauma is imperative for all professionals working with victims of such crimes in order to preventing retraumatisation and secure valid, comprehensive testimony. Some of the difficulties specific to these crimes in obtaining clear statements for criminal proceedings include the following issues.

If the sexual assault is recent victims are most likely in a state of shock at the time of questioning. This means they have difficulty with decision- making processes and are quickly overwhelmed in making choices. They have a limited ability to comprehend and retain information but do not ask for further explanation and their ability to remember is hindered by the traumatic experience thus resulting in a "jumbled memory" which results in fragmented information for the police interview.

Victims of assault and/ or abuse have experienced an extreme loss of control and may be suffering from intrusions (uncontrolled images of the assault/abuse). They may appear to be absent, have difficulty focusing on the questioning, may become emotionally overwhelmed and inconsolable although they are in no visible danger.

In contact with a victim it is helpful to clarify all steps, providing information and taking no action without the clear consent of the victim. If the victim appears to drift off, not be present or begins to become increasingly agitated (due to intrusions or dissociation) it is helpful to remain calm and friendly, to speak clearly and directly and to focus the victim on the here and now, perhaps taking a break for water and then returning to the task at hand.

After the initial shock or in cases of sexual abuse after filing charges, victims often go into a state of denial and repression, in which they tend to avoid all aversive situations that can be connected to the assault / abuse, with the motto, " what I don't see, hear, speak, think about, doesn't exist, so I'm ok." This often makes further

interviews but also advocacy contact challenging. During this phase it is helpful whenever possible, to allow the victim to choose what contact they have with all parties involved in the criminal proceedings, including advocates.

Victims of sexual assault and child sexual abuse nearly always struggle with feelings of shame and guilt. They are extremely sensitive to the responses of their environment- to the assault/abuse itself but also to their own reactions to the assault or abuse. When the perpetrator is someone close to them, there is often an ambivalence towards him or her, resulting sometimes in contradictory statements in police interviews or in further contact with the perpetrator. Blaming themselves and minimizing the assault / abuse are forms of psychological protection: to restore control -“If I was to blame, then I can prevent such assaults / abuse from happening to me again”- and to reduce the impact of the assault / abuse – “other people have experienced much worse than me so it can’t be that bad.” The truth is that no victim of assault or abuse is guilty. The perpetrator alone carries the responsibility for the assault or abuse. And all traumatic experiences have psychological – and sometimes physical - consequences that must be addressed in some way by the individual, with or without professional support.

Therefore, in contact with victims of sexual assault or child sexual abuse, it is important to take care in formulating questions or statements so that they will not be interpreted by the victim as questioning his or her credibility or integrity in the situation or blaming him or her for the assault / abuse. It is also important not to minimize the gravity of either the thoughts and feelings of the victim or the assault/abuse itself – even if he or she does.

mandatory specialized training in sexual assault, child sexual abuse & psychotraumatology should be required for allVictim advocates

Police Interviewers & Criminal Detectives

Medical Examiners / Doctors / Nurses taking evidence

Criminal Lawyers & States Attorneys & Judges

And the qualification of victim advocates shall be standardized with specialized training also in the roles, tasks and functions of the justice system.

The organization of interdisciplinary cooperation should be initiated and organized by the justice department and funded by the state and/or federal government. This should include interdisciplinary immediate response teams with law enforcement, medical examiners and advocates along with interdisciplinary round tables to continually address the issues surrounding sexual assault, child sexual abuse and necessary professional and political responses.

Victim advocacy services must be the responsibility of the state and federal governments and thereby financially secured.

It would be helpful to be able to provide more trained women for police interviewers and medical examinations as well as women judges in cases of sexual assault and child sexual abuse since ca. 80% of perpetrators in these cases are male.Videotaped victim testimony admissible as evidence at trial could be extremely significant in supporting victims of sexual assault and/or child sexual abuse. Implementation must, as with all possible proceedings, be decided on an individual basis with the explicit consent of the victim - a video interview is certainly counterproductive for instance, with victims who were filmed during the assault/abuse.

Expeditious proceedings (ideally with a maximum of 6 months between the filing of charges and the court date) would be a substantial relief for all victims of sexual assault and/or child sexual abuse so they may heal and move on in their lives.

Role Of CHILDLINE – In Providing Victim Assistance To Child Victims Of Abuse And Neglect In India

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Introduction:

The recent Oscar award winner 'Slumdog Millionaire' was an Oscar winner for the film industry, but the story line of the movie remains a harsh reality for many street children in India. Childhood in India is not consistent because it is dependent on the variables like the geographical location, their Social and economic status, their physical and mental ability. These factors, coupled with the traditional practices like child marriage, caste system, discrimination against the girl child, child labor and Devadasi tradition determine the vulnerability of the children of India to abuse and the resulting victimization. The child helpline Childline or Ten....nine... eight.... 1098 has emerged, in the last twelve years of its existence in India as a help line or perhaps a life line for the street children of India, preventing victimization and providing Victim assistance and services. The development of any nation can be judged by the way it treats persons who are helpless and vulnerable and not by the number of computer professionals it churns out !

Definition of Abuse Before the Convention On the Rights of the child :

In 1999, the WHO Consultation on Child Abuse Prevention compared definitions of abuse from 58 countries and drafted the following definition:

Child abuse or maltreatment constitutes all forms of physical and/or, emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power."

Definition of Abuse After the Convention On the Rights of the child :

Any action, whether it is a single or continuous violation that infringes any rights provided in the Convention on the Rights of the Child, constitutes Abuse !

Definition of Victims :

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985 is rightly considered as a 'magna carta' for victims and defines Victims as a person who individually or collectively, have suffered harm, which include physical or mental injury, emotional suffering or economic loss or substantial impairment of fundamental rights through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power.. A person who has suffered harm in any of the above means is a victim, regardless of whether the offender is identified, apprehended, prosecuted or convicted and regardless of the of the familial relationship between the offender and the victim. This definition includes a child suffering child abuse in the hands of his/her caretaker/ parent/ teacher etc. The term 'victim' also includes the immediate family or dependants of the direct victim and persons who have suffered harm while intervening to assist victims in distress or to

prevent victimization.

What is Victim Assistance ? :

The definition for the term Victim assistance in the Article 8 of the Draft Convention dated 14 November 2006 goes with the victim assistance services that are offered by Childline in India.

To cite a few sections of the article :

(1) States Parties shall ensure that the necessary material, medical, psychological and social assistance to victims is provided through government, voluntary, community-based and indigenous means. Such assistance may be provided through any agencies or comprehensive programs that are appropriate under domestic laws or norms.

(3) States Parties should be encouraged to establish local and regional victim assistance centers to coordinate networks, develop and make referrals, and provide outreach to victims and direct services where appropriate.

(4) States Parties shall facilitate the referral of victims by the police and other relevant agencies to victim assistance centers or other service institutions.

(6) States Parties shall seek to establish the following kinds of assistance to victims:

A. Immediate Assistance:

(a) medical attention and accompaniment to medical exams, including first aid, emergency medical attention and medical transport. Support services should be provided to victims when forensic examinations are called for or in the aftermath of death;

(b) material support such as shelter, housing, transportation, or property repair;

(c) crisis intervention, involving crisis counseling and problem solving;

(d) information and notification about what happened to the extent that such information does not interfere with investigation, including notification of any immediate responsibilities to the criminal justice system. Assistance should be offered in notifying family or friends of what happened;

(e) protection from repeat victimization should be provided through the development of safety and security plans. This may include information on police surveillance, relocation, emergency communication and the like. It may also involve assistance with obtaining protection orders through the judicial system;

(f) victims should be protected from media intrusion; general support and advocacy should be offered when victims interact with social, justice and medical institutions as well as appropriate referrals for urgent needs;

(g) confidentiality and privacy should be guaranteed to the extent allowable under current law and policy.

B. Medium term Assistance:

(a) the continuation of the services provided under A 'Immediate Assistance';

(b) psychological health and spiritual interventions that may include post-trauma

counseling, mental health therapy, pastoral counseling, or traditional healing intercessions;

(c) assistance with financial needs or claims including filing and advocacy for compensation claims, restitution, insurance, or emergency funds.

(d) legal referrals should be provided for legal assistance in the criminal or civil justice systems. To the extent possible such legal assistance should be free.

(e) Information, support and assistance concerning options for participation in alternative justice forums should be provided.

C. Long term Assistance:

(a) the continuation of the services provided under A 'Immediate Assistance' and B 'Medium Assistance';

(b) assurances and re-establishment of the victim's place in the community and in the workplace should be encouraged;

It is therefore evident that Childline is doing yeomen service in the area of victim assistance by offering short, medium and long term assistance as specified in the draft convention. The newsletter of the Childline India foundation ' Hello Childline' illustrate the numerous case studies when Childline has offered protection and assistance to the children throughout the length and breath of the country.

Background Information

In this context the background information would give an idea of the magnitude of the problem of Child Abuse in India and the need for such a service in the absence of a national level child protection scheme.

One fifth of the worlds children live in India

The second largest child population in the world.

44% of India's total population of more than a billion are aged below eighteen.

44,476 children were missing in India;

India major source and destination country for trafficking children from within India and adjoining countries.

Half a million girl children in commercial sex and organized prostitution.

(Source :A Report 2005 on Trafficking in Women and Children in India)

Magnitude of the problem :

A Study On Child Abuse : India 2007 A report by Ministry of Women and Child Development is an exhaustive survey on the issue of child abuse. These results show shocking figures of abuse and the need for child protection for both boys and girls. Some of the findings are:

Two out of every three children in India are physically abused,

53% of the surveyed children reported one or more forms of sexual abuse.

Around 54.22 per cent of the boys and 22.54 per cent of girls from the city have faced severe forms of abuse like rape, sodomy, touching or fondling, being forced to exhibit private parts and photographed in the nude.

Over 82.43 per cent boys and 58.69 per cent girls from the city have faced other forms of abuse like forcible kissing, sexual advances during travel, family gatherings and being exposed to pornographic materials.

The reality is that in spite of this Child protection has remained largely unaddressed. The times gone by demonstrate that children are never a priority for any government. This may be attributed to the fact that they have no voting rights and consequently there is 'investment' in the vote bank like the other welfare schemes of the politician.

Government Initiatives for Child Protection:

The Government has taken initiatives since the Fourth Five-Year Plan (1969-74). The various steps taken to improve the lot for children by the Government of India include National Plan of Action for Children in 1992, after the 1990 World Summit for Children. It also ratified the United Nations Convention on the Rights of the Child (UNCRC) and has submitted the Periodic Country Reports to the UN, which record some positive changes in the situation of children in India.

The Indian Constitution 1950 has several provisions that strongly articulate its commitment to children. This decade has witnessed the highest rate of legislations related to children in the history of the country. To name a few,

The Juvenile Justice (Care and Protection of Children) Act 2006,

The proposed Immoral Traffic (Prevention) Amendment Bill 2006,

Offences Against Children Bill,

The Child Marriage Bill

Pre-Conception and Pre-Natal Diagnostic Techniques Act

Protection of Child Rights Act 2005,

Challenges

After the ratification of the Convention on the rights of the child (CRC) there has been a shift from addressing children's issues as a matter of charity to a matter of deliverable entitlements. The Government has formulated policy and delivery systems for the realization of child rights. The National Commission for Children, the National Initiative for Child Protection and the Integrated Child Protection Scheme are a few steps in the rights direction. But implementation requires budget allocation and more often than not these legislations and programs remain a rhetoric and not a reality for children in India. This inadequacy of the infrastructure is due

to the skewed budgetary allocations of funds for child rights for Child protection in India in 2008- 2009 the allotment was (180 crores) or 37.5 million dollars and in 2009- 2010 - 54 crores - 11 ¼ million dollars. Child protection services is receiving a negligible budgetary allocation of 0.34% of the Union Budget resources for children. Though children have featured in the national development plans, deficiency in the budget allocation has given rise to significant problems and gaps in services to children. Childline has taken it upon itself to initiate several campaigns for policies on Child protection and demands for legislations, but victimization of the children in India still is a reality.

Childline Initiatives :

The Childline Initiatives for prevention of victimization promotion of child rights and child protection emerge as the silver lining in the cloud. Childline 1098 is a round the clock emergency telephone helpline for children in distress situations. CHILDLINE India Foundation (CIF), is the nodal agency in India for the childline services in India. It is a government-civil society initiative under the aegis of the Ministry of Women and Child Development (MWCD), Government of India. The Victim Services it offers for child protection ranges from response to a call on the emergency 1098, to rescue of children from child labor, physical and sexual abuse, repatriation, rehabilitation, to undertaking research and advocacy at a national level on child protection issues. This objective is achieved through partnership with family, community or civil society organizations. Childline India Foundation they initiate several dialogues at the city level with the local government systems, The Child Advisor Board (CAB) for child protection have been formed for child protection have been formed in every district and finally CHILDLINE provides the data in policy and legislation formulation. The CHILDLINE collaborates with the Ministry and initiates the National initiative for Child Protection (NICP), by focusing on sharing an understanding of issues related to children with the Allied Systems, like the police, transport, health, railways, labor department ,department of telecommunications the Juvenile Welfare Boards and the Child Welfare committees. Childline has emerged as the frontline professionals when child victim services are concerned. The Partners in the government sector include the Ministry of Women and Child Development, the Department of Telecommunications, the Ministry of Health, the Railway Ministry, the Department of Social Defence, the Information and Broadcasting and the Social Welfare Department. The partners in the Non-Governmental Sector include the Childline India Foundation, the NGOs and Universities in 83 cities of India.

Together they pursue the goals of

Facilitating a clear understanding of and commitment to Child Rights and Child Protection and create a child – friendly environment among the Allied Systems.

Enhancing in the Allied Systems an understanding of Child Rights and the law.

Evolving a child – friendly approach and intervention by the Allied Systems both at the organizational and individual levels.

Determining avenues of collaboration between Allied Systems and CHILDLINE resulting in the development of various programmes and services for Child Protection.

Advocating on issues related to the protection of Child Rights.

Encouraging the systems to elicit children's participation in all processes.

Childline India Foundation strives to achieve these goals by establishing Childline in India, facilitating networking and partnerships, developing Policy, Research, Documentation , Creating awareness, advocacy and by developing new programs and services.

The Millennium Development Goals and child protection:

The Millennium Development Goals (MDGs) were developed out of the eight chapters of the United Nations Millennium Declaration, signed in September 2000.

Eradicate extreme poverty and hunger

Achieve universal primary education

Promote gender equality and empower women

Reduce child mortality

Improve maternal health

Combat HIV/AIDS, malaria, and other diseases

Ensure environmental sustainability

Develop a global partnership for development

The CRC also draws attention to four sets of rights for every child namely the The Right to Survival ,The Right to Protection The Right to Development and The Right to Participation. A close look at the CRC, the eight MDGs and 21 targets would reveal a crucial link between child protection and achievement of these goals thus creating a child – friendly environment where the best interest of the child will be ensured resulting in the development of various programmes and services for Child Protection. and when childhood is homogeneous.

The Road ahead

The implementation of the Integrated Child Protection scheme, passed in February 2009, again under the pressure and lobbying by Childline activists, promises a brighter future and a child friendly India for the children of country . The Integrated Child Protection Scheme marks a significant step ahead for our development as a humane polity. This progressive path-breaking scheme combines several vertical schemes for children, and for the first time introduces child protection infrastructure at the state and district level. This scheme will also support the universal expansion of CHILDLINE 1098 to all districts of the country. It aims to concretise the state/government's responsibility of creating a child protection system in the country. It will function as a Government-Civil Society Partnership under the overarching direction of the Centre and State Governments. The ICPS scheme is a great step forward in protecting children. This scheme has cause great buoyancy and anticipation in the child rights area , but the transformation from mere rhetoric to reality needs a political will !

Conclusion:

Therefore the Interdependence of Government Organizations, NGO's and Corporate Sectors is vital to Child Protection in India. The Government and the Criminal Justice System are the Enforcing authority, have the duty with both the manpower and the funds. The Non Governmental Organizations or Childline posses much needed drive, dedication, time and have emerged as the front line professionals as far as reporting of child abuse and providing victim assistance is concerned. The Corporate sector with the financial resources need the commitment to the Corporate Social Responsibility and do their bit by funding research and projects. Child protection can only be achieved through this partnership, working together to prevent the victimization of children.

Acknowledgements:

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Data Protection considerations for Victim Support organisations

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1. What is data protection?

The notion of data protection became widespread in the 1970's, in connection with the increase of information technology, telecommunication networks and other devices used to process data and transfer information, both within and outwith a State. As such, data protection as a specific legal protection appeared as a result of the weakening or disappearance of some natural boundaries that earlier ensured the protection of privacy.

The overall aim of data protection is protection of privacy. Data protection establishes rights for individuals to dispose over all data in connection with their personality, including what information is held about them and how it may be used. Data Protection ensures that only relevant information is recorded and restricts the range of agencies, organisations and individuals able to access the information.

1.1 Why is data protection important to victims?

Data protection is of vital importance to protect the privacy, health and security of victims of crime, as it aims to ensure that contact details, information relating to the crime and the individual reaction of the victim is not shared with anyone who are not authorised to receive the information. For instance, it is of vital importance for victims of violence or domestic abuse who live under protected identity that their name and address is not accessible to their ex-partner. Appropriate data protection and information security processes are needed to ensure that this aim is fulfilled.

There are 22 Victim Support organisations throughout Europe that are part of the network Victim Support Europe, providing practical help and emotional support to people affected by crime. Victim Support's services are confidential, which means that all information gathered by staff and volunteers across Europe will be dealt with in a secure and sensitive manner. This includes a commitment to ensure that all personal information is handled fairly and lawfully with due regard to confidentiality and in accordance with the principles of data protection. Below, you will receive information regarding legislation and practices that will hopefully be of assistance to help ensure that all personal information about victims and witnesses, held by Victim Support organisations throughout Europe, is kept safe and secure.

2. Main European data protection legislation

The first development in globalisation of data protection was made by the Organization for Economic Cooperation and Development (OECD), who in 1980 created data protection guidelines. The special importance today of these guidelines is that the United States (US) is a member of the same organisation, so the OECD guidelines link data protection legislation in the EU and the US.

In 1981 the Council of Europe adopted the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Article 5 deals with the quality of data which, similarly to articles contained in the OECD Guidelines, states that "personal data undergoing automatic processing shall be a) obtained and processed fairly and lawfully; b) stored for specified and legitimate purposes and not used in a way incompatible with those purposes; c) adequate, relevant and not excessive in relation to the purposes for which they are stored; d) accurate and, where necessary, kept up to date; e) preserved in a form which

permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.”

Following the adoption of the Council of Europe Convention, the European Commission took the view that the Convention would solve the problem of harmonisation of data protection legislation within the EU. In 1981, a recommendation was put forward to encourage EU Member States to adopt the Convention. It eventually became obvious to the Commission that there was a varied degree of reluctance towards this legislation and that Member States were strongly divided concerning the question of data protection. As a result, the Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on free movement of such data was adopted in 1995. The need for these regulations was brought about by the differences among the national data protection regulations and the consequent obstacles to the creation of a single internal market. All Member States of the EU were required to bring their national legislation in line with the provisions of the Directive by 24th October 1998. The data protection Directive applies to “any operation or set of operations which is performed upon personal data,” called “processing” of data. Such operations include the collection of personal data, its storage, disclosure, etc. The Directive applies to data processed by automated means (e.g. a computer database of customers) and to data that are part of or intended to be part of non-automated “filing systems” in which they are accessible according to specific criteria. (For example, the traditional paper files, such as a card file with details of clients ordered according to the alphabetic order of the names).

Regarding victims’ right to privacy, the European Convention on Human Rights and Fundamental Freedoms entails several articles that are of interest. The main article would be article 8, right to respect for private and family life:

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

If unauthorised disclosure occurs that threatens the life of a victim, breaches of article 2, right to life, could come into play.

The EU is also basing the right to privacy and respect for data protection on article 6 of the Treaty on the European Union:

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.

The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

To summarise, the main legal documents regarding Data Protection in Europe are:

OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980)

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Council of Europe (1981)

Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1995)

Treaty on the European Union (TEU): Article 6

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR): Article 8

3. Data protection principles

3.1. European Directive

Data must be processed fairly and lawfully

Information must be collected for explicit and legitimate purposes and used accordingly

Data must be relevant and not excessive in relation to the purpose for which they are processed

Data must be accurate and where necessary, kept up to date

Data controllers are required to provide reasonable measures for data subjects to rectify, erase or block incorrect data about them

Data that identifies individuals must not be kept longer than necessary

The EU Directive states that each Member State must provide one or more supervisory authorities to monitor the application of the Directive within their jurisdiction. One responsibility of the supervisory authority is to maintain an updated public register so that the general public has access to the names of all data controllers and the type of processing they do

In principle, all data controllers must notify supervisory authorities when they process data

Personal data can only be processed (e.g. collected and shared) with another agency within an EU Member State or between Member States if (EU Directive, Article 7):

The data subject has unambiguously given his or her consent, i.e. if he or she has agreed freely and specifically after being adequately informed

Data processing is necessary for the performance of a contract involving the data subject

Processing is required by a legal obligation

Processing of data is necessary to protect an interest that is essential for the data subject's life. An example is in the case of a car accident and the data subject is unconscious, emergency paramedics are allowed to give blood tests if it is deemed essential to save the data subject's life

Processing is necessary to perform tasks of public interests or tasks carried out by official authorities (such as the government, the tax authorities, the police etc.)

Finally data can be processed whenever the controller or a third party has a legitimate interest in doing so. However, this interest cannot override the interests or fundamental rights of the data subject, particularly the right to privacy. This provision establishes the need to strike a reasonable balance, in practice, between the business interest of the data controllers and the privacy of data subjects. This balance is first evaluated by the data controllers under the supervision of the data protection authorities, although if required, the courts have the final decision.

Sensitive data

Very stringent rules apply to processing sensitive data (EU Directive, article 8):

1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

2. Paragraph 1 shall not apply where:

the data subject has given his explicit consent to the processing of those data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving consent

processing is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment law in so far as it is authorized by national law providing for adequate safeguards

processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent

processing is carried out in the course of its legitimate activities with appropriate guarantees by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects

the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims.

3. Paragraph 1 shall not apply where processing of the data is required for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject under national law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy.

4. Subject to the provision of suitable safeguards, Member States may, for reasons of substantial public interest, lay down exemptions in addition to those laid down in paragraph 2 either by national law or by decision of the supervisory authority.

5. Processing of data relating to offences, criminal convictions or security measures may be carried out only under the control of official authority, or if suitable specific safeguards are provided under national law, subject to derogations which may be granted by the Member State under national provisions providing suitable specific safeguards. However, a complete register of criminal convictions may be kept only under the control of official authority.

Exceptions

The right to privacy may sometimes conflict with freedom of expression and in particular, freedom of the press and media. It is therefore up to the Member States to establish exceptions in their data protection laws in order to strike a balance between these different but equally fundamental rights. National law might allow other exceptions to provisions of the Directive. (These include the obligation to inform the data subject; the

publicising of data processing operations; the obligation to respect the basic principles of good data management practice.) Such exceptions are permitted if, among other things, it is necessary on grounds of national security, defence, crime detection, enforcement of criminal law, or to protect data subjects or the rights and freedom of others. Additionally, derogation from the right to access data may be granted for data processed for scientific or statistical purposes.

3.2 A National example – UK Data protection Act 1998

The UK Data Protection Act entails 8 principles regarding the processing of personal information:

1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met

2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes

3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed

4 Personal data shall be accurate and, where necessary, kept up to date

5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes

6 Personal data shall be processed in accordance with the rights of data subjects under this Act

7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data

8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data

3.2.1 Personal data

According to the first principle of the UK Data Protection Act 1998, to process personal data, at least one of the conditions in Schedule 2 should be met, and in relation to sensitive personal data, at least one of the conditions in Schedule 3 should also be met. Regarding the processing of victim's information, Victim Support could use the following conditions to legitimise processing information:

Schedule 2

the data subject has given consent to the processing

the processing is necessary for compliance with any legal obligation to which the data controller is subject

the processing is necessary for the performance of a contract to which the data subject is a party

the processing is necessary in order to protect the vital interests of the data subject

the processing is necessary for

the administration of justice

the exercise of any functions of the Crown, a Minister of the Crown or a Government Department

3.2.2 Sensitive personal data

“Sensitive personal data” includes some of the information recorded by Victim Support, such as

the racial or ethnic origin of the victim

his physical or mental health or condition

his sexual life

the commission or alleged commission by him of any offence

any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

Schedule 3

To be allowed to process “sensitive personal information”, in addition to one of the conditions in schedule 2, one of the conditions in schedule 3 should also be fulfilled. Victim Support organisation could legitimise processing victims’ sensitive information by fulfilling one of the following conditions:

the data subject has given consent to the processing

the processing is necessary

in order to protect the vital interest of the data subject or another person in a case where:

consent cannot be given by or on behalf of the data subject

the data controller cannot reasonably be expected to obtain the consent of the data subject

in order to protect the vital interest of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld

the processing is in the substantial public interest, is necessary for the discharge of any function which is designed for the provision of confidential counselling, advice, support or other service and is carried out without the consent of the data subject because the processing

is necessary in a case where consent cannot be given by the data subject

is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject, or

must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the provision of that counselling, advice, support or other service. (this exception has been introduced by the Data Protection (Processing of Sensitive Personal Data) Order 2000, created under Data Protection Act 1998 section 9(2).

4. Disclosing personal data to/from Victim Support

4.1 Police referrals

For most victims, the first information they get about the range of services offered by Victim Support and other support groups in the voluntary sector is given from the police. Following the introduction of Data Protection legislation, many police forces across Europe became concerned that their victim referral practices might not be in accordance with data protection principles and the number of referrals to Victim Support fell. However, this does not have to be the case and referrals to Victim Support can still be conducted in compliance with data protection legislation, without violating the privacy of the victim. A recommended way of doing this is for police forces to always inform the victim about the services offered by Victim Support and that the victims' contact details will be passed to Victim Support if they do not express a contrary wish. Letters/leaflets given from the police about Victim Support should also include this information. Information about Victim Support and an acknowledgement that the victim does not want to opt out of the referral practice should be a mandatory part for the police to fill in when they record a crime, to show that they have informed the victim of the possibility to opt-out of the referral scheme and what the victim responded. This is to ensure that victims have a genuine opportunity to say if they do not want their details passed on to Victim Support. The police should accordingly have effective mechanisms in place to ensure that such wishes are respected. Victim Support should themselves ensure that their service arrangements for processing any data passed on to them are fully compliant with data protection principles.

Regarding what information is disclosed from the police to Victim Support, the disclosure should be limited to only include vital information, such as name, contact details, age, gender and crime type. This information is needed to ensure that the most suitable person in Victim Support will contact the victim to offer services and support. Individual police forces and Victim Support organisations can of course decide between themselves if disclosures should be limited to only include certain crime categories or aggravated factors, to ensure that the services of Victim Support are offered to the victims that need it the most.

4.2 Cross-border information sharing with another EU country

Sharing information with other Victim Support organisations in other EU Member States follow the same European data protection principles, there are no additional restrictions on the transfer of personal information to other EEA countries. Although these types of disclosures might be seen as more "risky", there is no reason why a controlled and limited sharing of necessary information should result in breaches of data protection. As stated in the 1995 Directive, "[w]hereas the object of the national laws on the processing of personal data is to protect fundamental rights and freedoms, notably the right to privacy, which is recognized both in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the general principles of Community law; whereas, for that reason, the approximation of those laws must not result in any lessening of the protection they afford but must, on the contrary, seek to ensure a high level of protection in the Community".

4.2.1 Legislation

Cross-border transfer of personal data is dealt with in many international treaties, for instance the OECD guidelines says that member States may limit the flow of specific data regulated by data protection norms, with regard to the nature of the data concerned as well as the fact that the other Member State is not providing an "equivalent protection" of these data. The guidelines move on to say that "member countries should avoid developing laws, policies and practices in the name of the protection of privacy and individual

liberties, which would create obstacles to transborder flows of personal data that would exceed requirements for such protection”.

Article 1 of the EU Directive from 1995 states that “Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection” of fundamental rights and freedoms of natural persons, and in particular right to privacy. The Directive also says that “in order to remove the obstacles to flows of personal data, the level of protection of the rights and freedoms of individuals with regard to the processing of such data must be equivalent in all Member States...Given the equivalent protection resulting from the approximation of national laws, the Member States will no longer be able to inhibit the free movement between them of personal data on grounds relating to protection of the rights and freedoms of individuals, and in particular the right to privacy”. So by increasing and improving data protection legislation and processes in all EU Member States, Victim Support organisations will be able to share information with each other in a safe and secure manner, with the view to offer support to victims of crime across Europe. Information-sharing is even allowed with countries outside of the EEA that has adequate data protection and information security regulations, “the protection of individuals guaranteed in the Community by this Directive does not stand in the way of transfers of personal data to third countries which ensure an adequate level of protection”.

4.2.2 Right to process cross-border disclosures

Ideally, consent should be sought from the victim to have his/her personal data, such as contact details and crime type disclosed to Victim Support. If consent cannot be gained, or if consent cannot reasonably be sought, any of the following subsections of article 7 of the EU Directive could, if applicable, be used to support the disclosure of contact details to Victim Support:

- (c) processing is necessary for compliance with a legal obligation to which the controller is subject
- (d) processing is necessary in order to protect the vital interests of the data subject
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1 (1)

According to article 14 (a), a victim always has the right to object to any information being processed and sent to another Victim Support organisation.

4.3 Cross-border information sharing with a third country

For Member States of the EU, transfer of information to a third country is regulated in article 25 and 26 of the EU Directive.

Article 25 states that:

“1. The Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to

compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures an adequate level of protection.

2. The adequacy of the level of protection afforded by a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law, both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.

3. The Member States and the Commission shall inform each other of cases where they consider that a third country does not ensure an adequate level of protection within the meaning of paragraph 2.

4. Where the Commission finds...that a third country does not ensure an adequate level of protection within the meaning of paragraph 2 of this Article, Member States shall take the measures necessary to prevent any transfer of data of the same type to the third country in question."

Article 26 gives some exceptions where personal data can be transferred to a third country, even if the country does not ensure an adequate level of protection within the meaning of Article 25 (2). These exceptions include that the data subject has given his consent unambiguously to the proposed transfer

the transfer is necessary for the performance of a contract between the data subject and the controller

the transfer is necessary or legally required on important public interest grounds, or for the establishment, exercise or defence of legal claims

the transfer is necessary in order to protect the vital interests of the data subject

the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights; such safeguards may in particular result from appropriate contractual clauses

4.4 Information security

Regarding what type of protection is needed to ensure that personal data of victims are kept safe, all international documents mentioned above entail a clause that each State must provide appropriate technical and organisational security measures to protect personal data against accidental or unlawful destruction, alteration, loss or unauthorised disclosure or access (stated in EU Directive article 17, Council of Europe Convention article 7 and OECD Guidelines principle 11). This implies that all Victim Support organisations that process victims' details (this includes recording, storing, sending or receiving personal details of victims) must have adequate safety measures in place to fulfil these safeguards. To do this, the following requirements should be considered:

only relevant information should be recorded

paper files should be kept in locked and secure cabinets

electronic case recording systems must entail adequate security standards

documents entailing personal details of victims must be password protected to ensure that only authorised people can access the information

information may never be shared with other agencies or individuals without authorisation

Example

Anna lives in the Netherlands with her husband. While on holiday in Scotland, he assaults her and she is forced to seek medical care. Anna's husband has been abusive to her in the past, but this time Anna has had enough and decides to leave him. Since her husband has made serious threats to her and she is very afraid that he will realise these threats and hurt her again, she wants to keep her new address and contact details secret from him. While in Scotland, Anna comes into contact with Victim Support Scotland, who offers her emotional and practical assistance. When Anna travels back to the Netherlands, Victim Support Scotland discloses Anna's address and phone number to Victim Support Netherlands, in order for them to be able to continue to offer support to her.

Caution

Before disclosing Anna's contact details, including address, Victim Support Scotland must ensure that Victim Support Netherlands will keep Anna's details secret from her husband.

Disclosing this information to Anna's husband might pose a serious threat, not only to her privacy but to her life, health and wellbeing.

If Victim Support Netherlands will not be able to keep this type of information safe, they cannot be seen to have adequate security measures to protect the information, so no transfer of data should be conducted.

If in doubt, contact the other Member State's public authority responsible for monitoring the application within its territory of the provisions adopted by the Member State in response to the EU Directive (see article 28, EU Directive for more information). This is also a good way for Victim Support organisations to get more information regarding what type of security measures are needed to protect victims' information in their own as well as other Member States.

5. Questions

The following questions would be useful for Victim Support organisations to think about when considering sharing information:

- 1) Is it possible to fulfil your objectives without transferring personal information?
- 2) Is there actually a transfer of personal information taking place?
- 3) Can the information be shared?
- 4) Is the destination country outside the EEA?
- 5) Has the country been confirmed as 'adequate' by the European Commission?
- 6) Are there other ways to achieve adequacy?

1. Is it possible to fulfil your objectives without transferring personal information?

Before making a transfer or otherwise processing personal data you should consider whether it is possible to achieve your aims without actually processing personal information. If personal information is anonymised so that it is not possible to identify individuals from it, then the data protection principles will not apply and you are free to transfer the information. For instance, statistical information of number of supported victims etc. does not mention any personal information and can therefore be shared freely without any data protection concerns.

2. Is there a transfer?

A transfer involves sending information to a recipient in another country. This is not the same as transit through a country. The eighth principle of the UK Data Protection Act 1998 will only apply if the information moves to, rather than simply passes through, a country outside the EEA.

3. When can personal information be shared?

Please see chapter 3 above for information regarding European as well as UK legislation.

4. Is the destination country outside the EEA?

There are no restrictions on the transfer of personal information to other EEA countries, the same legislation applies as regarding disclosures within the same Member State. However, if disclosure to a third country is being considered, this country must have “adequate protection” for the information.

5. Has the country been confirmed as “adequate” by the European Commission?

The European Commission can decide if a country has an adequate level of protection for personal information. Currently, the following countries are considered adequate. Please see http://ec.europa.eu/justice_home/fsj/privacy/thirdcountries/index_en.htm for an up-to-date list of countries considered to be adequate.

6. Are there other ways to achieve adequacy?

Even if the European Commission has not decided that the law in a country is adequate, you can still transfer personal information if you are satisfied that the particular circumstances of the transfer ensure an adequate level of protection. The UK's Data Protection Act 1998 sets out the factors you should take into account to make this decision. These relate to:

- the nature of the information being transferred;
- how the information will be used and for how long; and
- the laws and practices of the country you are transferring the information to.

This means you undertaking some form of risk assessment. You must decide whether, in all the circumstances of the transfer, there is enough protection for the involved individual. This is known as an assessment of adequacy. To assess adequacy you should look at:

- the extent to which the country has adopted data protection standards in its law;
- whether there is a way to make sure the standards are achieved in practice; and
- whether there is an effective procedure for individuals to enforce their rights or get compensation if things go wrong.

Considering the type of sensitive personal information held by Victim Support organisations, providing a confidential services to people in a vulnerable situation, we should be very restricted in sharing information with countries and agencies that do not provide adequate protection of the information, as this may have extremely serious consequences to the life, health and safety of the victim(s) involved and may also result in irreversible damage to Victim Support's reputation.

Preventing to become a victim – a data protection project for the youngest

Project Dadus

Clara Guerra and Sónia Sousa Pereira **Portuguese Data Protection Authority**

The CNPD – Comissão Nacional de Protecção de Dados – is the Portuguese Data Protection Authority (DPA).

The CNPD is an independent body, with powers of authority throughout national territory. It is endowed with the power to supervise and monitor compliance with the laws and regulations in the area of personal data protection, with strict respect for human rights and the fundamental freedoms and guarantees enshrined in the Constitution and the law.

The protection of personal data is designed as a fundamental right with constitutional standing² under the Portuguese legal framework, conceived as a way to promote respect for individual privacy as regarded in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

On our daily basic activities such as applying for a job, using credit cards or browsing on the internet we disclose many personal data. The use of this information is the keynote when it comes to data protection.

On the European level, in order to remove the obstacles to the free movement of data without diminishing the protection of personal data, Directive 95/46/EC (the Data Protection Directive) was developed aiming to harmonise national legal provisions in this field and to develop equivalent protection across the European Union.

The Portuguese Data Protection Act (Law 67/98 of 26 October) transposed into the Portuguese legal system the above mentioned Directive and it followed the first Portuguese Act on the Protection of Computerized Personal Data of 1991 (Law 10/91 of 29 April).

There are several principles and rules related to data processing and they all work together in order to ensure that personal information held on individuals is pertinent and adequate to the purpose of the processing, updated and accurate.

If this is the general rule for common citizens, it becomes more relevant and essential when it comes to victims, often under a vulnerable position. Fair processing, confidentiality, non-discrimination and respect for private life play a significant role in this field, when even physical integrity might be at stake.

One may ask whether there is a connection between victims and personal data, once it might not be so evident at first glance.

When victims enter the protection circuit either on Victim Support Organizations, or in the National Health System, or in the Judicial System, they have to disclose quite an amount of personal data and, in many cases, to disclose what we consider sensitive data – data revealing privacy aspects or concerning health or sex life. This kind of data, by its nature, is particularly safeguarded by law and requires additional guarantees.

Therefore, also Victim Support Organizations should develop a data protection policy in order to promote the full scope of protection on victim's rights.

The CNPD has several legal responsibilities³, such as:

3 For further information on the CNPD's duties, please visit the English version of our website at <http://www.cnpd.pt/english/bin/about/tasks.htm>

To supervise and monitor compliance with the laws and regulations in the area of personal data protection.

To issue prior opinion on any legal provisions and on legal instruments in preparation in Community or international institutions relating to the processing of personal data.

To exercise investigative powers, having access to data undergoing processing.

To exercise powers of authority, particularly those of ordering the blocking, erasure or destruction of data, or imposing a temporary or permanent ban on the processing of personal data.

To warn or publicly censure the data controller for failure to comply with legal provisions on data protection.

To be engaged in legal proceedings, in case of violation of the Data Protection Act.

To report to the Public Prosecution Office any criminal offences arising out of its functions and to take the necessary and urgent measures to provide evidence.

Having in mind this scope of activity, we strongly believe that we should work in partnership with all the stakeholders on victims' rights protection.

On the other hand, also in what data protection concerns, it is quite important to raise awareness among the public to prevent victimization. Nowadays, the increased use of emergent new technologies is generating new kinds of victims with great incidence in children, an especially defenseless group. New phenomena like cyberbullying, identity theft or malicious commercial practices are making more and more victims, with very serious consequences.

For that reason, the CNPD within its competence of promoting data protection principles and rights, decided to launch an ambitious and pioneer project, trying to go beyond a transitory campaign: to include the data protection matters in the school curricular programs.

The new generation was given the amazing chance of reaching the world with a click. Already born in digital era, children and young people have a quite natural relationship with Information and Communication Technologies. From their surprising ability to use the TV control, when they can't even stand up properly on their feet, to their extraordinary skills to handle easily new tools and equipments never stop astonishing us.

This aptitude is not, however, kept up with the required awareness to make use of such technologies in a responsible way. Privacy and data protection issues are not definitely in the centre of young people's

concerns, in particular when the giddiness of today's communication possibilities demands immediate responses, not leaving much time for second thoughts.

On the contrary, children seem to willingly indulge their privacy everyday in exchange for fitting in and socializing, what turns them into vulnerable targets for unscrupulous companies and an increasing variety of criminals.

The need to take action against this problem has been recently in the middle of the debate among the data protection community. Some initiatives addressed to children were already built up, in some countries, to alert them for the dark side of this moon.

The idea was developing a nation-wide, structural and long-term project that would provide children guidance, along with their common learning process, on how to use new technologies in a more conscious way towards a privacy culture.

After getting an enthusiastic support from the Ministry of Education, formally registered in a protocol that foresees the introduction of data protection in all school levels (1-12), the Portuguese DPA created, in a first phase, Dadus Project, addressed to children from 10 to 15 years old.

Dadus is an anthropomorphic figure that gives a face to the Project – “he” is a cool teenager listening to his MP3. He is easy to identify with, and therefore plays a mediator role with the pupils. His name is phonetically similar in Portuguese to the word “data”.

The CNPD developed a basic data protection program, outlined in thematic units, like any other discipline, to be worked with the pupils in the classroom. There are also several supporting materials to be used in different kinds of activities.

The DPA created a website for the Dadus Project (<http://dadus.cnpd.pt>), where all the thematic contents and materials are available to download and print, in a required sign up area for teachers. The public area of the website contains news, images, legislation and, more recently, a dedicated area for parents, with practical advice and a discussion forum for sharing experiences and exchanging point of view.

At the same time, it was created the Dadus Blog (<http://dadus.blogs.sapo.pt>) , for the pupils’ direct participation, either at school or at home, where they can engage in discussions raised by Dadus in his posts, publish their school works and find interactive games, cartoons, tips and other funny materials for an entertainment way of learning data protection.

The project was designed to be quite flexible, in order to allow multiple forms of participation by schools. There are some specific disciplines where Dadus can be easily applicable, such as Civil Education, ICT, and Project Area. However, we provide also some working suggestions for multidisciplinary activities.

Dadus Project was symbolically launched on the 28th of January 2008, European Data Protection Day. The priority was putting the project on the road; therefore, regional meetings were held across the country to present the Project directly to the schools and to hand out posters and a dossier for teachers.

Despite the school year was already advanced, the first reactions to the Project were very positive, overcoming our own expectations. Teachers started immediately adhering to Dadus, registering in the Project and giving data protection lessons!

This school year, the Project went on quite well. We have developed new interactive games for children and we promoted three contests on privacy issues: rap lyrics, posters and mini-videos, which got a very good participation from the youngest. It was also signed a Protocol with the School of Cinema to produce multimedia materials to be used in Dadus Project.

Dadus has been a full homemade project. It has represented a great effort for a small seized DPA like the Portuguese. Nevertheless, the pleasure of developing it and making it work is a wonderful reward.

Dadus Project is having already a significant effect in our society, in schools, in parents, in education and youth organizations, in the media. It is perceptible that people are concerned and much apprehensive towards the dangers children are exposed in the Internet. Parents feel anxiety for not being able to deal with these new issues, mostly because of their lack of ICT knowledge; teachers encounter daily difficulties at

schools to solve real problems and to provide adequate guidance. Maybe that is why Dadus Project was so much welcomed.

In fact, data protection is undoubtedly on the agenda and we'll try to keep it there. Our main goal is raising awareness among the youngest, by providing them information to make responsible choices. More than saying what they should or should not do – and teens naturally like taking risks - we would rather contribute to help them grow conscious of their fundamental right to privacy and data protection. That is the way to plainly achieve self-determination and to fully exercise their rights.

How is this related to victims? Information surely is a great tool to prevent victimization.

We should give the new generation a chance to make better decisions in the future.

Role of Research in Pushing Forward Victims' Rights

Diogo Pinto da Costa **Faculty of Medicine – University of Oporto**

It is a great honour and pleasure to be here and to share with you – even if in a very brief way - some preliminary results of an empirical study on the procedural reaction to victims of crime, which makes part of a research I have been conducting for my Phd thesis on the influence of forensic expertise on compensation within the criminal procedure, including the treatment victim receives along the different stages of the criminal proceedings.

First of all, I should make clear the nature of the approach to this theme.

In short, it is rooted on a transdisciplinary and systemic perspective of Criminology, focused, for what matters now, on the reaction of criminal justice authorities to crime.

Within the wide range of possible interactions detected on crime analysis, I will highlight the relations between the aggrieved party in the face of the crime – the victims - and criminal justice authorities, so we can properly say that this research is clearly victim-oriented, which is largely justified by the fact that victim is – undoubtedly still is – the weakest element of the punitive triade (that is the expression used by portuguese penal law, to illustrate the correlation of forces and statutes between the major intervenients in the criminal process: the state, the offender, and the victim).

As we know, the role of the victim in the criminal justice system and their rights in the criminal law and proceedings have been main themes treated on several materials issued by european institutions.

One persistent idea common to those documents is the possibility of compensation to victims of crime, which is a way to reparation. Compensating the victim is indeed a fundamental outcome for victims and plays an important part in re-establishing social order.

The right of victims to receive compensation also exists in Portuguese criminal (both in substantive and in procedural) legislation (although only in a very specific situation can the courts award compensation without a formal claim by the victim).

But compensation is not a function of punishment, at least not in portuguese law.

This is quite clear as the goals of punishment are expressively written in the portuguese Penal Code, and victim, and reparation to victims of crime are not included in this legal construction.

The victim is put aside in this matter.

Nevertheless, there are, in different phases and moments along the criminal procedure, measures that can be taken by the judiciary authorities in order to assure compensation to the victim.

So we ask the question: can we find in the course of criminal proceedings in case files any elements that might enable us to identify a tendency in order to affirm a real concern towards the victim?

And do we get from the Prosecution Service and from trial judges any signs of the beginning of a change in the way the system views victim's needs and position in the criminal justice system?

Can there be a new role for compensation in the penal law?

The study tries to contribute to give answers to those questions, and to seek differences between the law in the books and the law in action.

DESCRIPTION

We analysed 210 case court files that ended with a conviction sentence by criminal courts in the city of Porto - county of Porto, judicial district of Porto (the results that will be shown now will only include a little less than those 210 cases).

Those cases concern facts occurred between 1992 and 2003.

The court sentences date between 1992 and 2005.

The convictions were decided by a single judge when crimes were punishable up to 5 years imprisonment, and were decided by a collective court (composed of three judges) when crimes were punishable by more than five years imprisonment.

The convictions were about the following crimes:

- Fatal offences against the person (murder and involuntary manslaughter);
- Non-fatal offences against the person (including physical offences, sexual offences in adult victims, sexual child abuse, domestic violence context included).

We should also consider another distinction between those crimes:

The so-called public crimes and the semi-public crimes.

Public crimes are crimes that can/must be prosecuted by the public prosecutor without the consent of the victim, such the ones we mentioned here: murder and involuntary manslaughter; sexual child abuse, and domestic violence when referred to crimes committed after the year 2000).

We refer to semi-public crimes when the indictment by the public prosecutor must be supported by a formal complaint filed by the victim: that's the case of physical offences, sexual crimes against adults, and domestic violence (before the year 2000).

It must be point out that we are talking about serious or relevant offences against the persons: consumed offences against life, this is, murder, or offences against health that had significant physical or psychological consequences according to forensic expertise that took place in criminal proceedings.

PRELIMINARY RESULTS

I will now present some preliminary results strictly focused on the reaction that judiciary authorities had to the situations caused by crime.

Some results presented may vary when we consider certain variables applied strictly within a specific type of crime. Because there is no time available to make that distinction here, the results refer to all types of crimes considered.

Let's begin by examining how judiciary authorities (first, prosecution authorities and later, trial judges) answered to the situations caused by crime.

Well, then, how did the Public Prosecution Service, (in the Indictment) consider victim's emotions and feelings in the commission of the offence (for example, pain, fear, and suffering caused at the moment injury was perpetrated);

Only in nearly 22% of cases were those emotions and feelings taken into account by the Prosecution Service.

And how did the Prosecution Service take into account victim's emotions and feelings as a consequence of the facts occurred (for instance, grief, distress, or sadness for the incapacity or disability);

It did it in a very mitigated way, for only in 16% of cases did the Prosecution Service expressed concerned about the crime consequences which affected the victims.

The functional incapacity (the incapacity to use the body and senses) as a result of the offence, was rarely referred in the indictment from the prosecution service:

15 is the percentage of indictments that refer to the functional incapacity caused by the offence.

Now we shall concentrate on the Trial Court and on how the sentence takes victims needs into consideration.

First, specifically on the importance given to compensation offered by the offender to the victim, when choosing the sanction imposed to the defendant, only in 3,4 % of the cases did the Court referred to that factor in the sentence.

About the use of the possibility to award compensation without a formal request by the victim (which is only possible under special circumstances), the data speaks for itself, for only in 1,2% of the cases, did the court awarded compensation by its own initiative.

We also found out that the conviction sentence refers to the emotions and feelings of the victim when crime was perpetrated, in 30 % of the cases.

The emotions and feelings of the victim following the moment of crime, are referred in 29% of the cases.

The functional incapacity of the victim as result of the injuries caused by the criminal offence, was referred in only 14 % of the cases.

Another interesting variable to consider is if the sentence grants measures to support victim (to assist, protect the victim, or help the victim cope with crime effects), which was verified only in one case.

In Portuguese criminal procedure, victim compensation can be achieved through the attachment of financial conditions to a suspended sentence.

So, in what measure did trial courts use the possibility to suspend a sentence in order to allow compensation?

The sentence was suspended in 52% of the cases studied.

In 71 % of these suspensions the court did not impose any requirements whatsoever for the offender to undertake in favour of the victim.

In the remaining percentage of cases, sentences were suspended on the condition that:

- the defendant compensates the victim for his/her losses, as determined in the sentence on compensation after the civil claim, - this happened in 12 % of the cases studied.
- and also on the condition the defendant follows the victim protection orders imposed by the sentence (for example, restraining orders) – this happened in nearly 8 % of the cases studied.

Finally, is there any reference to compensation as a goal of the procedure or of the conviction sentence?

Only in 1 case did the court take into account victims needs to compensation (or the protection of the victim) when stating reasons for the conviction sentence passed.

It seems we have enough data for now to make room to discussion.

DISCUSSION

And it's clearly not a pretty view we have in this picture of the criminal proceedings concerning the position of crime victims and the way they are viewed by the system.

Judiciary authorities (Prosecution Service and trial courts) make little use of the referred legal mechanisms that might facilitate compensation to the victims of crime.

It is shown that judiciary authorities, in the vast majority of the cases, do not emphasise the harm suffered by victims nor their needs to assistance.

In most cases, judiciary authorities do not see compensation as a goal of punishment, or at least, as its secondary function.

But this apparently negative signs are just one side of the coin. And we should pay attention to other signs.

We did verify that in some indictments, and mostly in some (few) conviction sentences, judicial authorities do show a certain due consideration to the situation of victims caused by crime, and even in one only but significant case the trial court saw compensation as a goal of the sentence, that is, it built their decision on the view of compensation.

And that is a quite remarkable fact, because, being so, why do, why should similar case files receive different treatment from Courts, why do, why should victims, in such equal circumstances, get distinct treatment in criminal proceedings?

Should the outcome of a criminal case file be affected or influenced by the magistrates attitude towards the protection and compensation of victims, and by their own conception of the role and limits of their function when choosing the sentence?

I presume we all have quite the same concerns about these matters and questions.

In fact,

If there already are legal rules that facilitate compensation,

If the legal system allows magistrates to build their decision around the need to compensate the victim, why not consider, and this is a provocative question, to extend compensation as a concrete goal of penal law?

Compensation – we must point out – has been considered by the Supreme Court of Justice to have an auxiliary function of the goal of punishment. It is considered to be an imposition of a duty to repair the harm caused by the offender, thus fulfilling the goals of punishment, considering, mostly, the rehabilitation of the offender and the confirmation of the validity of the violated norm – this is, the “counterfactual stabilization of normative expectations”, as put by Niklas Luhmann's in his theory of law.

CONCLUSIONS

Thus, we might have reached a point where we can advance some conclusions.

First, the study is based on a theoretical model of empirical research that places the victim in the edge of the interactions between crime and the judiciary system.

Second, the data analysed were collected through and registered in a database that allows to follow-up the role and the position of the victim in all the phases of criminal proceedings.

Third, data analysis suggests there are consistent elements to confirm the viability to include in penal law the obligation of Courts to consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence.

From this point on, doors are open to discuss the opportunity to include victim compensation (and consequently, reparation) among the goals of punishment, explicitly presented in the Penal Code.

I will end expressing the firm belief that Scientific Research is fundamental in Pushing Forward Victim's Rights.

The role of research in advancing victims' rights

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We have made some progress over the past two decades in the area of victim assistance and in the acknowledgement of their rights. At different times and in different contexts, men and women have contributed to the advent of these changes, which we all witnessed and in which we, ourselves, were instrumental.

The research community contributed to these changes, which have led to the inclusion of victims' rights on the social and political agenda. It is difficult to assess the value of that contribution, given that the field has evolved so much in recent years.

I do not profess to be able to cover all matters fully. I shall nonetheless attempt to make a modest contribution based on my personal experience and my commitment to the cause of victims over the past 25 years.

Let us recall that the first studies in victimology were not focused on victims' rights. They were first and foremost concerned with trying to understand the role of victims and their contribution to the emergence of criminal activity, as well as trying to determine what prompted that criminal activity, with a view to preventing it.

The same is true of victimization surveys, which were originally devised to document the number of undetected crimes and to enhance our knowledge about crime. Yet, these provided important data about the personal characteristics of victims, about people or groups at risk of being victimized, about the impacts of victimization, and about what prevents people from reporting criminal activity. These surveys established the urgency of taking action and thus contributed to an approach to victimology based on action, despite the fact that such was not the purpose at the outset.

As of the mid seventies, many countries shifted from an act-based victimology and moved toward and action-based victimology. As of then, the needs and the rights of victims became issues of public concern. In North America, the actions and demands of feminists had a decisive impact. They cried out against the lack of services for victims and against how they were treated before the courts, they demanded a better balance between the rights of the accused and those of victims, and forced governments to rally and take action. They effectively lobbied politicians and paved the way for many initiatives that fell within the scope of the humanitarian victimology movement.

In the early eighties, various task forces looked into how victims were treated and made recommendations likely to ensure that their needs were met more adequately. Three reports – the Méliez report in France; the Report of the Federal-Provincial Task Force on Justice for Victims of Crime in Canada; and the Task Force for Victims of Crime in the United States – painted a rather dark portrait of the treatment of victims in the Criminal Justice System and of how we respond to them when they want to be informed, helped or compensated. These documents focus on needed changes in legislation and in institutional practices. They show the way ahead to the future. In 1985, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power marked a new turn and encouraged many countries to adopt legislation and statements of principles outlining the rights of victims.

The eighties were a pivotal step toward the emergence and acknowledgment of victims' rights. Research played a significant role in this shift in direction and in reflecting the winds of change. From then on, research became less interested in what the victim had done and more so in what could be done for the victim.

Micheline Baril, Professor at the École de criminologie de l'Université de Montréal, and Irwin Waller, Professor at the University of Ottawa, both adhered to this line of thought. As passionate advocates of victims' rights, they took part in the drafting of the UN Declaration, as well as in the implementation of several initiatives in the area of assistance to victims.

Micheline Baril was one of the first researchers to adopt a qualitative approach aimed at understanding what victims go through. In *L'envers du crime*, her doctoral thesis, and in other works, she gave a voice to victims in order to document the impact of violence, the dysfunctional nature of the Justice System and of compensation schemes, as well as the collateral harm suffered by victims when they turn to criminal justice and social agencies. She played a role in the implementation and the evaluation of the first pilot projects and initiatives in the area of victim assistance in Canada.

Her encounters with victims sustained her advocacy efforts and enabled her to put her research findings to contribution to summon institutions and governments to act and engage in a path toward change. Through her body of work, she demonstrated that research could combine with action, enhance it, and support it without compromising its legitimacy or its scientific scope.

Other countries have been able to rely on committed researchers who made their expertise available to support the cause of victims. These researchers made an exceptional contribution to this emerging movement, at a time when everything had to be done and when action was needed on all fronts, with limited means and practically non-existing funding. These pioneers were often criticized for acquiescing in humanist or activist victimology, which, it was said, had little to do with scientific victimology. Those researchers had the courage to innovate and to think outside the box.

From the early stages, research has contributed to enhancing our analysis and our understanding of criminal victimization and of the needs of victims taken as a whole. From a clinical perspective, we now have a better understanding of victims' reactions to their own victimization, of the processes leading to their being re-victimized, of the risk and protection factors subsequent to a traumatic event, and of the processes at play in their recovery. We have developed responses that more effectively take into account their specific needs, their life circumstances, the paths they followed, and their personal resources. Several studies have cast a disparaging light upon the evolution and implementation of victims' rights into programs, policies and laws enacted in recent years.

Certain problem areas have received more attention from researchers. In Canada, conjugal violence provides a good example of that. Policies were implemented in that area in the mid eighties. Major victimization surveys were conducted by Statistics Canada in 1993, 1999 and 2004; these allowed for the multi-faceted reality of family violence to be documented. There followed an increase in the number of projects resulting from a partnership between researchers and field practitioners. These research consortiums currently bring together several partners from universities, as well as organizations and agencies involved in the delivery of various services in the community. They developed protocols and collaboration mechanisms conducive to the sharing of knowledge, of power and of resources. They build upon egalitarian relations. They have generated an important body of research on the issue of family violence and have initiated a number of activities focusing on the transfer of knowledge and training. At the Université de Montréal, the achievements of the Centre de recherche interdisciplinaire sur la violence faite aux femmes et la violence familiale provide evidence of the potential of such alliances between universities and the various fields of practice. These groups of experts carry a lot of influence and act as important catalysts to advance thinking and action in many fields of victimology.

Conclusion

While several studies conducted in recent years were not specifically focused on victims' rights and while they did not have a transformative perspective at the outset, they were nonetheless instrumental in advancing victims' rights.

Based on past experience, we can reassert the importance of research in consolidating the work we have undertaken to ensure that the interests of victims are more fully considered.

Research is essential to sustain our effort, as we are confronted by new issues and new forms of exploitation and violence, which require a response and solutions. Research provides a basis for advocacy to fight against prejudice, to change attitudes, and improve the ways in which we relate to victims. It can provide advocacy groups with data to sustain, to flesh out, and to articulate their positions in their dealings with decision-makers, funders, and lawmakers. Research can assist in counteracting right-wing policies advocated by certain governments wanting to please voters.

Some areas of research are particularly promising. Broenen's approach to assessing the implementation the Council of Europe's recommendation in 22 European countries should inspire us. That type of research enables us to better target the initiatives that foster the realization of victims' rights, as well as the obstacles that hinder or delay the exercise of those rights. It acts as a barometer, providing a "site inventory" that is necessary to gauge institutional dysfunctions, to assess the quality and impact of programs, policies and legislation aiming to ensure the greater welfare of victims.

The field of victims' assistance is evolving on an ongoing basis. Research must focus on best practices and on the strategies that are most effective to ensure that victims' rights materialize. It must cause us to take a critical look at issues such as the professionalization and bureaucratization of services, such as the impact of new approaches linked to restorative justice or alternatives to imprisonment, and such as the increasingly punitive focus of criminal justice policies in response to the needs of victims. Furthermore, it needs to force us to review our objectives and our actions by placing them in the larger context of human rights and forcing us to move away from the rather restraining offender-victim relationship. Given all those issues, the light that research can shed is essential.

While reactions and resources vary greatly from one country to another, and while comparisons are difficult, we need to share our experiences with a view to enhancing our actions and our thinking. Knowledge transfer is a major issue. This conference has provided us with an opportunity to move in that direction.

I was privileged to have the opportunity of participating in your deliberations over these two days. We need to collaborate and to develop a team spirit, if we hope that victims can take full advantage of their rights.

Appendix A. Questionnaire Items Regarding Costs, Quality of Procedure, Quality of Outcome and Control Variables

Crime Victim Indicator		Information on the Crime
	Control Variables	
✓	Offense severity	Was there a weapon used during the crime and/or were you severely hurt?
✓	Appropriate charges	Did you agree with the [legal actor]'s decision (not) to prosecute the offender?
✓	Previous contact with system	Have you had previous contact with the criminal justice system?
✓	Previous victimization	Have you been victimized in the last five years?
✓	Victim Assistance	Did you receive assistance during the process? Were you satisfied with [type of assistance]
✓	Victim Preferences	Please indicate whether or not you wanted to go to court or have the charges dropped
✓	Victim-offender relationship	Did you know the other party before the problem occurred?
✓	Defense counsel - propriety	To what extent did the defense counsel refrain from asking improper questions?
✓	Medical – satisfaction	To what extent were you satisfied with the medical professional?
	Costs	
✓	Costs (domestic violence victims)	Please indicate if any of these consequences of reporting occurred: dual arrest, offender arrested – no income, children taken away
	Money lost due to attending process	Estimate the money you lost because of the process.
	Total time costs	Estimate the time you spent on the process.
	Stress costs	Please indicate the amount of stress you experienced as a result of the process
	Other emotions costs	Please indicate how the process made you feel.
✓	Secondary victimization - copability	Please indicate what type of consequences the process had on your ability to cope with the problem.
✓	Secondary victimization – self-esteem	Please indicate what type of consequences the process had on your self-esteem.
✓	Secondary victimization – optimism for future	Please indicate what type of consequences the process had on how optimistically you view the future.
✓	Secondary victimization – trust in legal system	Please indicate what type of consequences the process had on your trust in the legal system.
✓	Secondary victimization – just world	Please indicate what type of consequences the criminal process had on your faith in a just world.
	Quality of the Procedure	
	Procedural (PJ) – Process control	To what extent were you able to express your views and feelings towards the police, prosecutors and/or the judge during the process?
	PJ – Process control	To what extent were your views and feelings considered during the process?
	PJ – Decision control	To what extent were you able to influence the outcome arrived at by the process?
	PJ - Consistency	To what extent were the same rules applied to you and the other party?
	PJ – Bias Suppression	To what extent was the process objective?
	PJ - Accuracy	To what extent was the process based on accurate information of what really happened?
✓	PJ – Privacy from public	To what extent did the process consider your privacy from the public and the media?
✓	PJ – Privacy from offender	To what extent did the process consider your privacy/protection from the offender?
✓	PJ – Ethicality (avoiding offender)	To what extent were you able to avoid seeing the offender (i.e. separate waiting rooms, offender leaving courtroom during testimony)?
✓	RJ – Voice to offender	To what extent were you able to express your views and feelings towards the offender during the process?
	Restorative Justice (RJ) - Recognition	To what extent did the process recognize the harm that was done to you?
	RJ – Receival of explanation	To what extent did you have the opportunity to ask the other party for an explanation of what had happened?
	Process satisfaction	To what extent were you satisfied with the process?
	Interpersonal (IP) – Respect	To what extent did the [legal actor] treat you with respect?
	IP - Propriety	To what extent did the [legal actor] refrain from making improper comments?

	IP - Propriety	To what extent did the [legal actor] refrain from asking improper questions?
√	IP – Lack of victim blame	To what extent did the [legal actor] refrain from making you feel you were to blame for the crime?
	Informational Justice (IF) - Preparation	To what extent did the [legal actor] explain the process thoroughly?
	IF – Explanation of rights/ options	To what extent did the [legal actor] explain your rights and options during the process thoroughly?
	IP - Satisfaction	To what extent were you satisfied with the [legal actor]?
	IF - Trustworthy	To what extent did you find the [legal actor] trustworthy?
	Quality of the Outcome	
√	Retributive – Just deserts	To what extent did the outcome (punishment) even out the wrong that was committed by the offender?
	Distributive (DJ) – Equity	To what extent did the outcome consider your efforts to resolve the problem?
	DJ - Needs	To what extent were your needs considered in the outcome?
	RJ - reparation monetary harms	To what extent were your monetary harms repaired as a result of the outcome?
	Transformative (TJ)/RJ – Improved relationships	To what extent did the outcome improve the damaged relationship with the offender that resulted from the problem?
	Formal (FJ) – Transparency	To what extent was it possible for you to compare your outcome with the outcome in other similar cases?
	FJ – Similar outcomes	To what extent was your outcome similar to the outcome of other people in similar cases?
	IF – Explanation outcome	To what extent did you receive a satisfactory explanation of the outcome from either the police, prosecutor or judge?
	Legal Pragmatism - Enforceability	To what extent was the enforceability of the outcome taken into account?
	Legal Pragmatism - Antifoundationalism	To what extent did the outcome solve your problem?
√	Utilitarian - Deterrence	To what extent is the outcome likely to keep the offender from re-offending?
√	Utilitarian – Incapacitation	To what extent did the outcome take your safety into account through a means of incapacitation?
	RJ - Reintegration	To what extent did the outcome provide the offender with opportunities to keep him or her from committing future criminal acts?
	RJ - Acknowledgment	To what extent did the outcome acknowledge the harm that was done to you?
	RJ – Closure/Forgive	To what extent were you able to move forward with your life after you received the outcome?
√	RJ – Alleviation of fear	To what extent were you less fearful as a result of the outcome?
	RJ – Reparation emotional harms	To what extent were your emotional harms repaired as a result of the outcome?
√	RJ – Expression of remorse	To what extent did the other party have the opportunity to express remorse or regret during the process?
√	RJ – Acceptance of responsibility	To what extent did the other party have the opportunity to accept responsibility during
	Transformative – Outcome Favorability	To what extent was the outcome favourable for you?
	Legal Pragmatism – Satisfactory outcome	To what extent were you satisfied with the outcome?
	Demographics	
	Gender, age, ethnicity, marital status, people in household, education, employment, annual income	



APAV - Portuguese Association for Victim Support (Portugal)
Victim Support Europe (Netherlands)
Portuguese Ministry of Justice (Portugal)
Weisser Ring Austria (Austria)
Intervict - International Victimology Institute Tilburg (Netherlands)
Victim Support Scotland (Scotland)
Supporting Victims of Crime and Combating Corruption Foundation (Bulgaria)
Weisser Ring (Germany)
Brottsofferjouernas Riksförbund (Sweden)
Slachtofferhulp Nederland (The Netherlands)
Bily Kruh Bezpečí (Czech Republic)
Victim Support Northern Ireland (Northern Ireland)
Victim Support England & Wales (England)
Victim Support Malta (Malta)
Steunpunt Algemeen Welzijnswerk (Belgium)
INAVEM - Institut National d'Aide aux Victimes Et de Médiation (France)
Fehér Gyuru Közhazsnu Egyesület (Hungary)
Pomoc Obetiam Násilia (Slovakia)
Victimology Society of Serbia (Serbia)

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